United States Court of Appeals for the Second Circuit



APPENDIX

74-1653&1871

BP65

UNITED STATES COURT OF APPEALS

for the

ORIGINAL WITH PROOF OF SERVICE

SECOND CIRCUIT

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND ON CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Enterprise Association of Steam, Hot Water,
Hydraulic Sprinkler, Pneumatic Tube, Ice
Machine and General Pipefitters of New York
and Vicinity, Local Union No. 638 etc.

Case No.: 29-CC-374

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PETITION TO REVIEW ORDER MODIFYING ORDER OF THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

Petitioner,

-against-

NATIONAL LABOR RELATIONS BOARD,

Respondent.

The Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine and General Pipefitters of New York and Vicinity, Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Petitioner, hereby petitions this Court to review and modify an Order of the National Labor Relations Board, 209 NLRB No. 181, dated April 8, 1974. The National Labor Relations Board concluded that the Petitioner engaged in prohibited secondary boycott activities in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended. Petitioner

PETITION TO REVIEW ORDER MODIFYING ORDER OF THE NATIONAL LABOR RELATIONS BOARD

petitions this Court to review and modify that part of the Order of the National Labor Relations Board which improperly requires Petitioner to cease and desist from conduct violative of the said section of the National Labor Relations Act, as amended, as to employees of "any other employer or person engaged in commerce", and as to products of "any other employer or person".

Dated: New York, New York May 8, 1974.

DELSON & GORDON

By /s/ Ralph P. Katz

Member of the Firm

Attorneys for the Petitioner 230 Park Avenue New York, N. Y. 10017 (212) MU6-8030

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD DATED APRIL 8, 1974

209 NLRB No. 181

MFJ

D-8582 Glen Oaks, M.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ICE MACHINE, AIR CONDITIONING AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, AFL-CIO, STEAMFITTERS LOCAL UNION 638 of the UNITED ASSOCIATION

and

Case 29--CC--374

MANDELL & CORSINI, INC.

DECISION AND ORDER

On October 31, 1973, Administrative Law Judge Samuel Ross issued the attached.

Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of 1/
the exceptions and briefs and has decided to affirm the rulings, findings,
and conclusions of the Administrative Law Judge and to adopt his recommended Order.

If The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD DATED APRIL 8, 1974

D-8582

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent, Enterprise Association of Steam, Not Water, Hydraulic, Sprinkler, Pneumatic Tube, Compressed Air, Ice Nachine, Air Conditioning and General Pipefitters of New York and Vicinity, AFL-CIO, Steamfitters Local Union 638 of the United Association, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

APR 8 1974

Dated, Washington, D.C.

Edward B. Miller,	Chairman
John H. Fanning,	Hember
Howard Jenkins, Jr.,	Hember
NATIONAL LABOR RELATI	ONS BOARD

(SEAL)

JD-678-73 Glen Oaks, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ICE MACHINE, AIR CONDITIONING AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, AFL-CIO, STEAM FITTERS LOCAL UNION 638 of the UNITED ASSOCIATION

and

Case No. 29-CC-374

MANDELL & CORSINI, INC.

Alvin Blyer, Esq., of
Brooklyn, N.Y., for
the General Counsel.
Ernest Fleischman, Esq.,
of Delson & Gordon,
New York, N.Y., for the
Respondent Union.
James P. Lundy, Esq., of
Brewster, N.Y., for the
Charging Party.

· DECISION

Statement of the Case

SAMUEL ROSS, Administrative Law Judge: This case was tried before me in Brooklyn, New York, on September 10 and 11, 1973. The charge in this case was filed by the above-named Company on June 27, 1973, was amended on July 30, 1973, and a complaint based thereon issued on July 13, 1973, against the above-named Union (herein called Respondent)

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which alleges that Respondent engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) and Section 2(6) and (7) of the Act. The Respondent filed an answer which denies the substantive allegations of the complaint and the commission of unfair labor practices.

Upon the entire record, and my observation of the witnesses and their demeanor, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

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Findings of Fact

I. Commerce

The Charging Party, Mandell & Corsini, Inc. (herein called the Company), a New York corporation whose principal office is located in New York, New York, is a mechanical contractor which is engaged in the business of installing heating, ventilating and air conditioning systems. During the past year, a representative period, the Company purchased and caused to be delivered directly to various installation sites in the State of New York from places outside the said state, fan coil units, pipes, and other materials valued in excess of \$50,000.

The Trane Company (herein called Trane), a Wisconsin Corporation whose principal place of business is located in LaCrosse, Wisconsin, is engaged in the manufacture, sale and distribution of heating and air conditioning equipment and related products. Trane annually ships products valued in excess of \$50,000 from Wisconsin to places outside the said state.

Based on the foregoing admitted facts, I find that the Company and Trane are engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

At all times material herein, the Respondent Union has been and is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Issues

This case presents for determination the question of whether the Respondent engaged in certain conduct, and if so, whether the conduct constituted secondary activity prohibited by Section 8(b)(4)(i) and/or (ii)(B) of the Act, or lawful primary activity for the protection and preservation of work customarily performed by employees of the Company.

- 2 -

B. The Facts

The Company is a mechanical contractor which installs heating, ventilating and air conditioning systems, and is a member of the Mechanical Contractors Association of New York, Inc. (herein called MCA). The Respondent is a labor organization which represents steamfitters in the five boroughs and counties which comprise the City of New York, and in the counties of Nassau and Suffolk on Long Island, New York. The Company employs steamfitters who are represented by the Respondent Union pursuant to a collective bargaining agreement between MCA and the Union to which the Company is a signatory. August Corsini, the Company's chief executive officer and chairman of its Board of Directors, is also a director of MCA.

North Shore Towers Associates is the owner of property located in Glen Oaks, New York, on which it is erecting apartment buildings. In the fall of 1972, North Shore Towers Associates contracted through an agent with the Company for the latter to install a total energy plant, including heating, ventilating and air conditioning equipment, at its

Clen Oaks building project. 1/ The contract requires the Company, inter alia, to furnish and install approximately 6000 vertical fan coil units, and the contract specifications, after describing the "type" and "capacity" of these "air handling units," provides that they should be those known as "Verti Con" made by "Atmospheric Control Industries, Inc., or an approved equal."

Vertical fan coil units are a new type of air handling units used for heating, ventilating and air conditioning of buildings, and they replace horizontal fan coil units which are utilized for the same functions by the industry. Vertical fan coil units admittedly contain risers and branches which are precent and installed at the factory, and their use eliminates work which is performed at the jobsite by steamfitters when horizontal fan coil units are installed. The new units also eliminate cutting and threading or sweating of the connections between the fan coil units and the vertical risers which traditionally is performed on the job by steamfitters when horizontal fan coil units are installed.

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There are a number of manufacturers who make vertical fan coil units, and in the late fall of 1972, after entering into its contract with North Shore Towers Associates, the Company invited bids from several of them. Trane submitted the low bid, and in December 1972, the Company verbally awarded it a purchase order for 5,894 Trane Vertical Riser Fan Coil Units for a delivered net price of in excess of a million dollars.

^{1/} The original commitment to this contract was made orally and performance commenced in November 1972. The written contract between the Company and North Shore Towers Associates was entered into on June 12, 1973.

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On January 8, 1973, this verbal order was confirmed by a written letter of intent, and in late February or early March 1973, the Trane units were approved by the architect, engineer and owner of North Shore Towers as the equal of the Verti Con units made by Atmospheric Control Industries, Inc. referred to in the specifications of the contract between North Shore Towers Associates and the Company. 2/

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Modular Energy Corporation (herein called MEC), is a New York City based manufacturer of the same type of vertical fan coil units previously made by Atmospheric Control Industries, Inc. MEC was one of 10 the unsuccessful bidders for the Company's order for the North Shore Towers job. MEC's units, called Vertipak, like those of Trane, contain factory installed and precut risers and branches, work traditionally performed at the jobsite by steamfitters represented by the Respondent when horizontal fan coil units are installed. The use of Vertipak units 15 in heating and air conditioning systems similarly eliminates the cutting and threading or sweating at the jobsite of connections between the fan coil units and the vertical risers which is required when horizontal fan coil units are installed. Unlike Trane, however, at the times material herein, MEC was a party to a collective bargaining contract with 20 Respondent and employed and utilized steamfitters represented by the Respondent in the manufacture and/or assembly of its Vertipak units.

Ronnell Systems, Incorporated (herein called Ronnell) is another mechanical contractor in New York City which is engaged in the 25 tusiness, inter alia, of installing heating, ventilating and air conditioning systems. One of the principals of Ronnell is a stockholder and officer of MEC. It is undisputed that Ronnell employs steamfitters who are represented by the Respondent Union pursuant to a collective bargaining agreement identical to that which covers the steamfitters 30 employed by MCA's members, the Company, and MEC. Rule IX of the said collective bargaining agreement provides that certain specified work, including cutting and threading pipe (up to four inches in diameter) and fittings, is required to be performed by steamfitters, either at the jobsite "or in the shop of the direct employer," and in the latter case, 35 the pipe or fittings "must be labeled before leaving the shop" with labels "provided by Local Union 638." As interpreted by the Respondent, this provision applies to the branches, risers, fittings and connections in

^{2/} At the times material herein, Atmospheric Control Industries, Inc. was no longer in business.

^{3/} As previously noted, Trane is located in LaCrosse, Wisconsin, and thus is not within Respondent's jurisdictional area.

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vertical fan coil units, and this work is required to be performed by steamfitters employed by the mechanical contractor who installs the units, "the direct employer." However, notwithstanding the said provision and the Respondent's interpretation thereof, the Respondent Union has interposed no objection to the installation by Ronnell's steamfitters represented by it of vertical fan coil units made by and in the shop of MEC. 4/

On December 28, 1972, August Corsini, the chief executive officer of the Company, received a telephone call from John Donnelly, 10 a business agent employed by the Respondent Union and its admitted agent. According to Corsini's credited testimony, Donnelly asked Corsini from whom he was buying the vertical fan coil units for the North Shore Towers job, and Corsini answered that they "were purchased from the Train (sic) Company." Donnelly then said that inasmuch as the units had 15 not been purchased from MEC, "his men would not install the units. He would not be able to control the men, [and there] would be a severe labor problem and bloodshed." Corsini "hung up [the telephone] on Mr. John Donnelly." 5/

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MEC's Vertipak vertical fan coil units have been and/or are being installed by Ronnell's steamfitters at two projects in Respondent's jurisdiction -- one at East 58th Street, and the other, the Lincoln Towers job on 62nd Street and Columbus Avenue, both in New York City. 25 Donnelly admitted that he called Corsini on or about December 28, but his version of their conversation bore no resemblence to that of Corsini. According to Donnelly, he called Corsini regarding a jurisdictional dispute at the North Shore Towers project "between the steamfitters and the riggers" over the installation by the latter of 30 boilers and other equipment which "should have been installed by the steamfitters," and he assertedly called Corsin "at that time" to ask him "to intercede with the builder [who made the assignment] to see if the work couldn't be turned over to the people to whom it rightfully belonged which I considered [to be] the steamfitters work." 35 Donnelly further testified that he told Corsini that "before we have any labor problems or any blood shed between the steamfitters and the riggers I'd like to get it [the assignment dispute] straightened out." I regard Donnelly's testimony in this regard as unworthy of credence. Corsini admittedly had nothing to do with this alleged work assignment 40 dispute, and no plausible reason appears in the record for Donnelly to ask Corsini for assistance in the resolution of this alleged "problem." On the other hand, as noted infra, the threat that Corsini's employees represented by the Respondent would refuse to install the Trane units when they were delivered to the North Shore Towers job,

caused this subject to become an agenda item at a later meeting between MCA's directors and the Respondent's officers and agents. In view of the foregoing, as well as demeanor, I place no (Continued)

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Trane's vertical fan coil units are quite large and bulky, 6/ and they each weigh about 300 pounds. The general practice in the industry when horizontal fan coil units (which weigh about 70 pounds), or other heavy or bulky equipment, arrive at a jobsite, is that they are unloaded from the truck, "distributed to the particular floors that they are assigned for [installation], and the installation will proceed immediately behind this operation." 7/

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On January 9, 1973, Respondent's business agent Donnelly visited the North Shore Towers jobsite and had a conversation with Superintendent Schembeck, Stephen Ray, the Company's foreman, and 10 employee Donald Hackett, the Respondent's shop steward at the project. All of the participants in this meeting with Donnelly were members of the Respondent Union. Only Schembeck and Donnelly testified regarding what was said. I credit their testimony about this meeting to the following extent only. 8/ Shop Steward Hackett asked Donnelly what he 15 should do when the vertical fan coil units (which the Company had ordered from Trane) arrived at the jobsite. Donnelly replied that "it [the units] was going to be a violation of [Rule Nine] of our trade agreement." Schembeck said that he "would like to see this particular problem solved before the units arrived at the job." According to 20 Schembeck, Donnelly said that "when these units come," they should "bring men on the job and unload them at the particular areas where they were going to be unloaded and Mr. Donnelly would come out on the job and look at the units and see if they were a violation of our trade agreement." Schembeck further testified that Donnelly told him, Ray, and Hackett, "to bring them [the vertical fan coil units] in on to the

6/ According to Corsini's undisputed testimony, these units are about 10 feet high, 14 inches wide, and 14 inches in depth.

^{5/ (}Continued) credence in Donnelly's version of this conversation, and I regard his testimony as generally unreliable.

^{7/} The quotes above are from the credited testimony of Paul Schembeck, the Company's field superintendent, which was corroborated by Corsini whom I also credit in this respect.

^{8/} As previously noted, I regard Donnelly's testimony as generally unreliable. I credit his testimony about this conversation only to the extent that it accords with that of Schembeck or constitutes an admission against the Respondent's interest.

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jobsite, unload them, and leave them at this point until he gave us the decision on the particular problem." According to Schembeck, Donnelly's instruction constituted a variance from the "usual procedure with respect to the receipt of [similar] materials" such as horizontal fan coil units. 9/

On January 30, 1973, the directors of MCA (including Corsini)
held a meeting with "most" of the twelve business agents employed by
the Respondent to discuss "differences and problems . . . then existing
in the industry." One of the items on the written agenda for this
meeting was the "problem" posed by the Respondent's requirements in
respect to the installation of vertical fan coil units. 10/ According to
Corsini's testimony which I credit, before the meeting began, John
Tracey, the Respondent's business agent at large, 11/ and Business Agent
Donnelly, both told him that he "should buy the [vertical fan coil] units
from MEC to avoid any labor problems." Corsini replied that he had
purchased the units from the Trane Company. 12/

20 9/ Donnelly's version of this conversation with Hackett, Ray, and Schembeck impliedly controverted the latter's testimony regarding the instruction Donnelly gave to them. According to Donnelly, he told Hackett, "when these units arrived on the job, unload them, put them in their respective places, wherever it might be, call me up, and I will take a look at them and tell you whether there's a violation [of the trade agreement] or not." I credit Donnelly's testimony in this regard only to the extent that it accords with that of Schembeck whose testimony I regard as the more reliable.

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10/ Corsini testified that "there was no agenda, [the meeting] was just to discuss things." In the light of my finding above which is based on the credited testimony of Emile H. Munier, the president of MCA, Corsini obviously was in error in this regard.

11/ Tracey supervises the Respondent's other business agents.

12/ Tracey, a witness for the Respondent, did not "recall that particular meeting" and had "no recollection of any discussion" of fan coil units. I do not regard Tracey's testimony as a denial of Corsini's which is credited above. Donnelly testified that his first conversation with Corsini regarding vertical fan coil units occurred during the luncheon of MCA's directors and Respondent's business agents which followed the regular meeting. As previously noted, I regard Donnelly's testimony as generally unreliable and I do not credit him in this regard (see fns.5, 8 and 9 supra).

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During the course of the said January 30th meeting, MCA's directors complained about the Respondent's inconsistent practice of requiring them when installing vertical fan coil units (other than those made by MEC) to recut by hand at the jobsite and to rethread or sweat the pipes, risers and branches which already had been cut and threaded or sweated and installed in the units at the manufacturer's factory, while at the same time permitting the installation by Ronnell at 58th Street of vertical fan coil units made by MEC without requiring the jobsite reduplication of such work. The response of the Respondent's agents to this complaint was that MEC's vertical fan coil units had a "UA manufacturers label" and therefore "had to be accepted and installed." 13/ The Respondent's business agents also told MCA's directors that the only vertical fan coil units which were acceptable for installation (without work reduplication) in Respondent's jurisdictional area were the Vertipak units made by MEC and those made by the Whalen Company located in Maryland, both of which bore UA labels, and that all others made outside the Respondent's jurisdiction, would not be "acceptable in Local 638 territory," and "would not be installed in New York City [without the reduplication of factory work]." 14/

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13/ UA is the abbreviated cognomen of the Respondent's parent labor organization, The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and

Canada, AFL-CIO. 25 14/ The findings above are based on the credited testimony of MCA president Munier and Corsini. Respondent's business agent William Daly who, according to Corsini, said that vertical f coil units "made out of the jurisdiction of 638 would not be accepted in New York City," and "would not be installed in New York City," was not called 30 by the Respondent to testify, and no explanation was offered for the failure to do so. The only testimony adduced by the Respondent regarding what transpired at this meeting was that given by Business Agent Donnelly. He testified that "during the lunch period . . . Corsini had said . . . what objections does (sic) the members of Local or the 35 officers of Local Union 638 have about installing vertical fan coil units," and that he answered, "we don't have any objections to it, as long as it's done by and for members members of Local Union 638.". Donnelly explained, "Unless the connection, coil connections and the risers [are] cut and threaded or soldered or welded by Local Union 638 men . . . on 40 the job or in the shop of the direct employer." As previously noted, I regard Donnelly's testimony as generall, unreliable. I nevertheless credit it to this extent only because it in effect corroborates the credited testimony of Corsini and Munier regarding the statements voiced by the Respondent's agents that vertical fan coil units other than those 45 made in factories approved by Respondent would not be installed unless those emanating from non-approved factories had work already done at the factory redone at the jobsite by the steamfitters represented by it.

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Contentions, Analysis and Concluding Findings

As previously noted, the complaint in this case alleges that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act. 15/
This section of the Act is generally known as the secondary boycott provision, and as the Board and the courts have repeatedly pointed out, it is aimed at "shielding unoffending employers and others from pressures in controversies not their own." 16/

The General Counsel contends that the Company is a secondary employer within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act; that Donnelly's instructions to Shop Steward Hackett to merely unload

15 15/ Section 8(b)(4)(i) and (ii)(B) of the Act provides as follows:

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Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents ---

(4)(1) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (11) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . Provided, that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

16/ N.L.R.B. v. Denver Building and Construction Trades Council (Gould & Preisner), 341 U.S. 675, 692.

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Trane's vertical fan coil units when they arrived at the North Shore Towers jobsite, and wait for his inspection of the units for possible contract violations, constituted inducement and encouragement to refuse to perform services within the meaning of subdivision (4)(i); that Donnelly's threats to Corsini, that "his men would not install the [Trane] units," that "he would not be able to control the men," and that there "would be a severe labor problem and bloodshed," constituted threats, coercion and restraint of a person engaged in commerce within the meaning of subdivision (4)(ii); and that an object of the said conduct was to force or require the Company to cease doing business with Trane and with North Shore Towers Associates.

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The Respondent's brief contends only that it did not induce or encourage any employee to refuse to perform services for the Company, and that it did not threaten, restrain or coerce the Company, within the 15 meaning of Section 8(b)(4)(i) and (ii) of the Act. At the hearing, the Respondent also contended that this case "basically is a right to control situation," and that it "had no preference" regarding whether the Company bought its vertical fan coil units from Trane or MEC, provided that the Company, "the direct employer," complied with Rule IX of its 20 contract with the Respondent and performed "specific areas of work" on the units either at the jobsite or inits own shop. The Respondent thus appears to contend that Rule IX is a valid work preservation clause, that the conduct which it denies engaging in was lawful activity directed towards requiring the Company to comply with the provisions of Rule IX, 25 and that the Company is a primary employer within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act. On the record in this case, I find no merit in any of the Respondent's contentions, and I conclude that it violated the Act as charged.

As found above, when Corsini notified Business Agent Donnelly that the vertical fan coil units required by the Company's contract with North Shore Towers Associates had been purchased from Trane and not from MEC, Donnelly told Corsini that "his men would not install the [Trane] units," that "he would be unable to control the men," and that there "would be a severe labor problem and bloodshed." Clearly, Donnelly's said statement to Corsini constituted threats, restraint, and coercion within the meaning of Section 8(b)(4)(ii), 17/ and the object thereof was to force or require the Company to buy the vertical fan coil units from MEC whose steamfitters were represented by Respondent, and not from Trane whose employees were not represented by it. It is thus quite obvious that Donnelly's threats were unrelated to the preservation of work for the steamfitters employed by the Company, but rather were intended to provide

^{17/} Brazil Hall, d/b/a Hall Refrigeration Sales & Service, 203 NLRB No. 148, JD p. 4.

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work for MEC's steamfitters employed by MEC, another unit. Thus, his conduct clearly was "calculated to satisfy union objectives elsewhere" and was classically secondary and not primary activity to preserve work for the Company's unit employees. 18/ I therefore find that by Donnelly's threats described above, the Respondent engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

As found above, on January 9, 1973, Business Agent Donnelly instructed Company employee Donald Hackett, the Respondent's shop steward, in the presence of the Company's field superintendent Paul 10 Schembeck and Foreman Stephen Ray, that when Trane's vertical fan coil units arrived at the North Shore Towers jobsite, they were to be unloaded and then await Donnelly's inspection "to see if they were a violation of our trade agreement." Donnelly admittedly stated that "it [the units] was going to be a violation" of Rule IX of the collective bargaining contract. His instruction to Hackett, Ray and Schembeck, all members of Respondent, thus was in effect a direction not to perform services which steamfitters usually performed upon the arrival of air handling units at a jobsite. As found above, those services consisted of distributing the units to the floor of the structure where they are scheduled to be 20 installed, and then installing them. Accordingly, Donnelly's instruction to Shop Steward Hackett, an employee of the Company, that he refrain from doing work (unless and until approved by Donnelly) which he normally would do upon the arrival of Trane's vertical fan coil units, clearly constituted inducement and/or encouragement of Hackett, an "individual," 25 to refuse to perform services for the Company, a person engaged in commerce or in an industry affecting commerce, within the meaning of Section 8(b)(4)(i) of the Act. 19/

Union's objective for this conduct was the preservation of work for the Company's employees under Rule IX of its collective bargaining contract, or whether its conduct was "tactically calculated to satisfy union objectives elsewhere." 20/ In the former case, the Company would be the primary employer, and Donnelly's inducement and encouragement of Hackett not to perform services would be lawful. In the latter case, however, the Company "would be a neutral [secondary] bystander" to the Respondent's

^{40 18/} National Woodwork Manufacturers Association v. N.L.R.B., 386 U.S. 612, 644-645; Orange Belt District Council of Painters v. N.L.R.B., 328 F. 2d 534, 538 (C.A.D.C.).

^{19/} N.L.R.B. v. Servette, Inc., 377 U.S. 46. 20/ National Woodwork Manufacturers Ass'n v. N.L.R.B., 386 U.S. 612, 644.

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dispute with Trane and other manufacturers of vertical fan coil units who, unlike MEC, were not parties to collective bargaining contracts with the Respondent, and Donnelly's conduct would transgress the proscriptions of Section 8(b)(4)(i), regardless of whether there was an actual dispute with such nonsignatory manufacturers of vertical fan coil units. 21/ Here, as previously noted, the record clearly discloses that the "tactical objective" of the Respondent was not to enforce compliance by the Company with Rule IX of its trade agreement, but rather to force the Company to buy its vertical fan coil units from MEC, and not from Trane, an "objective" other than preserving work for the Company's 10 employees. It is significant in this regard, that the Respondent's only demand upon the Company, originally made by Donnelly on December 28, 1972, and repeated by Donnelly and Tracey on January 30, 1973, was that the Company should buy its vertical fan coil "units from MEC and avoid labor problems." It is further significant that on the latter date, Business Agent Daly threatened that vertical fan coil units "made out of the jurisdiction of 638 would not be accepted in New York City," and "would not be installed in New York City." Compliance by the Company with the Respondent's demand that it purchase its vertical fan coil units from MEC rather than Trane, would have preserved no work for the 20 steamfitters employed by the Company, "the direct employer," for as noted above, it is undisputed that both MEC's units and those of Trane had branches and risers precut and threaded or sweated, and coil connections, all made at the factory, which thereby eliminated this work for the Company's employees at the jobsite. I conclude from all the 25 foregoing that Donnelly's inducement and encouragement of Hackett to refrain from performing services when the Trane units arrived at the jobsite was based on union objectives other than preserving work for the Company's employees, that an object of the said conduct was to form or require the Company to do business with MEC and to cease doing business. 30 with Trane, and that the Respondent thereby engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

I also find that by the statements of Respondent's agents

Tracey, Donnelly and Daly to Corsini on January 30, 1973, the Respondent further threatened, restrained, and coerced the Company and engaged in additional unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act. 22/

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^{21/} Id. 22/ Brazil Hall, d/b/a Hall Refrigeration Sales & Service, 203 NLRB No. 148, JD p. 4.

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IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent Union set forth in section III,

above, occurring in connection with the operations of the Company and
Trane described in section I, above, have a close, intimate and
substantial relation to trade, traffic and commerce among the several
States and tend to lead to labor disputes burdening and obstructing
commerce and the free flow of commerce.

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V. The Remedy

Having found that the Respondent Union has engaged in certain unfair labor practices, I will recommend that it cease and desist there15 from and take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel requests a "broad remedial order" to enjoin the Respondent from engaging in the type of conduct found unlawful herein in respect to Trane. The General Counsel bases his request on the fact that there are five prior decisions of the Board finding the Respondent in violation of the secondary boycott provisions of the Act, and which thus disclose a proclivity on the part of the Respondent to commit such violations. 23/ I find merit in this contention and accordingly will recommend the broad order requested by the General Counsel.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

30 Conclusions of Law

1. Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air Conditioning and General Pipefitters of New York and Vicinity, AFL-CIO, Steam Fitters local Union 638 of the United Association, is a labor organization within the meaning of Sections 2(5) and 8(b)(4) of the Act.

The Austin Company, Inc., 204 NLRB No. 118; Enterprise Fire Sprinkler Corporation JD-198-73, adopted by the Board pro forms on April 18, 1973. Enterprise Association of Steam, Hot Water, etc. (All-Boro Air Conditioning Corp.), 136 NLRB 1631; Enterprise Association, Local 638 (Allen-Stevens Corporation), 129 NLRB 555; Enterprise Association of Steam, Hot Water, etc. (Mechanical Contractors Association of New York, Inc. and Consolidated Edison Company of New York, Inc.), 124 NLRB 521, enfd. 285 F. 2d 642 (C.A. 2).

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- 2. Mandell & Corsini, Inc., and the Trane Company, are employers and persons within the meaning of Sections 2(1) and 8(b)(4) of the Act, and are engaged in commerce, or in an industry affecting commerce, within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.
- 3. By inducing and encouraging employees of Mandell & Corsini, Inc., to engage in a refusal in the course of their employment to perform services, and by threatening, coercing and restraining Mandell & Corsini, Inc., with an object of forcing or requiring Mandell & Corsini, Inc., to cease doing business with the Trane Company, the Respondent, Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air Conditioning and General Pipefitters of New York and Vicinity, AFL-CIO, Steam Fitters local Union 638 of the United Association, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.
- 4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
- Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I hereby issue the following recommended: 24/

ORDER

Respondent, Enterprise Association of Steam, Hot Water,

30 Hydraulic Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air
Conditioning and General Pipefitters of New York and Vicinity, AFL-CIO,
Steam Fitters Local Union 638 of the United Association, its officers,
agents, and representatives, shall:

1. Cease and desist from:

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(a) Engaging in, or inducing or encouraging employees of Mandell & Corsini, Inc., or any other employer or person engaged in

24/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, automatically become the findings, conclusions, decision and order of the Board, and all objections thereto shall be deemed waived for all purposes.

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commerce or in an industry effecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or (b) threatening, coercing, or restraining Mandell & Corsini, Inc., or any other person engaged in commerce or in an industry affecting commerce; where in either case an object thereof is to force or require Mandell & Corsini. Inc., or any other employer or person to cease using, selling, handling, transporting, or otherwise dealing in the products of the Trane Company, or any other employer or person, or to cease doing business with the Trane Company, or any other employer or person.

- 2. Take the following affirmative action which it is found will effectuate the policies of the Act.
- (a) Post at its business office and meeting halls, copies of the attached notice marked "Appendix." 25/ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for a period of 20 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.
 - (b) Furnish the said Regional Director with signed copies of the aforesaid notice for posting by Mandell & Corsini, Inc., and/or the Trane Company, if willing, at all places where notices to employees are customarily posted.
 - (c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Decision, what steps Dated at Washington, D.C. OCT 31 1973 have been taken to comply herewith.

Administrative Law Judge

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25/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

FORM NLRB-4726

APPENDIX

JD-678-73



NOTICE TO



MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL AT WHICH ALL SIDES HAD THE OPPORTUNITY TO PRESENT THEIR EVIDENCE, THE NATIONAL LABOR RELATIONS BOARD HAS FOUND THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT, AND HAS ORDERED US TO POST THIS NOTICE AND WE INTEND TO CARRY OUT THE ORDER OF THE BOARD.

WE WILL NOT (a) engage in, or induce or encourage individuals employed by MANDELL & CORSINI, INC., or any other employer or person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of their employment, to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or (b) threaten, coerce or restrain MANDELL & CORSINI, INC., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require MANDELL & CORSINI, INC., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with the TRANE COMPANY, or with any other employer or person.

	TUB CON NEW FIT	EER, HYDRAULIC SPRINKLER, PN BE, COMPRESSED AIR, ICE MACH IDITIONING AND CENERAL PIPEF I YORK AND VICINITY, AFL-CIO TERS LOCAL UNION 638 of the SOCIATION	INE, AIR ITTERS OF , STEAM UNITED
		(Labor Organization)	
			•
Dated		By(Representative)	(Title)
		(Representative)	(inches)

ENTERPRISE ASSOCIATION OF STEAM, HOT

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office. 16 Court Street - 4th Floor, Brooklyn, New York 11241

(Tel. No. (212) 596-3535)

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ICE MACHINE, AIR CONDITIONING AND GERNERAL (sic) PIPE FITTERS OF NEW YORK AND VICINITY, AFL-CIO, STEAMFITTERS LOCAL UNION 638 OF THE UNITED ASSOCIATION

and

Case No. 29-CC-374

MANDELL & CORSINI, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Mandell & Corsini, Inc., herein called Mandell, that Enterprise Association of Steam, Hot Water, Hydraulic, Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air Conditioning and General Pipe Fitters of New York and Vicinity, AFL-CIO, Steamfitters Local Union 638 of the United Association, herein called Respondent, has engaged in, and is engaging, in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of

the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this complaint and notice of hearing and alleges as follows:

- 1. The charge in this proceeding was filed by Mandell on June 27, 1973, and served by registered mail upon Respondent on or about June 27, 1973.
- 2. (a) Mandell is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.
- (b) At all times material herein Mandell has maintained its principal office and place of business at 850 Third Avenue, in the Borough of Manhattan, City and State of New York where it is, and has been at all times material herein, engaged in the business of installing heating, ventilating and air conditioning systems.
- (c) During the past year which period is representative of its annual operations generally, Mandell in the course and conduct of its business, purchased and caused to be transported and delivered to its various places of business, fan coil units, pipes and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered to its places of business in interstate commerce directly from states of the United States other than the state in which it is located.

- (d) At all times material herein, Mandell has had a contract with North Shore Towers Associates to install a heating, ventilating and air conditioning system at North Shore Towers located in Glen Oaks, New York, herein called the Glen Oaks job.
- (e) At all times material herein, the steamfitters employed by Mandell, who install such heating, ventilating and air conditioning systems, have been represented for purposes of collective bargaining by Respondent.
- (f) Mandell is and has been at all times material herein an employer and a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1)(2), (6) and (7), and 8(b)(4) of the Act.
- (g) North Shore Towers Associates is and has been at all times material herein a person engaged in commerce and in an industry affecting commerce within the meaning of Section 2(1), (6) and (7), and 8(b)(4) of the Act.
- 3. (a) The Trane Company, herein called Trane, is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of Wisconsin.
- (b) At all times material herein Trane has maintained its principal office and place of business in the City of La Crosse, State of Wisconsin, where it is, and has been at all time material herein,

engaged in the manufacture, sale and distribution of heating and air conditioning equipment and related products. It annually ships from Wisconsin to out-of-State points products valued in excess of \$50,000.

- (c) Trane is, and has been at all times material herein, a person within the meaning of Section 2(1) and 8(b)(4) of the Act.
- 4. (a) Modular Energy Corp., herein called Modular, is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.
- (b) At all times material herein Modular has maintained its principal office and place of business at Building Number 12,

 Brooklyn Navy Yard, in the Borough of Brooklyn, City and State of New York where it is, and has been at all times material herein, engaged in the manufacture of vertical fan coil units and related products.
- (c) At all times material herein, Modular has had a collective bargaining agreement with Respondent covering its employees.
- (d) Modular is and has been at all times material herein a person within the meaning of Section 2(1) and 8(b)(4) of the Act.
- 5. Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.
- 6. John Donnelly, John Tracey and William Daley are, and have been at all times material herein, the business agents and representatives of Respondent, acting on its behalf, and agents thereof.

- 7. In or around December 1972, Mandell contracted to purchase from Trane about six thousand vertical fan coil units to be installed at the Glen Oaks job, which units are to be delivered to said job commencing in or around August 15, 1973.
- 8. At all times material herein, Respondent has had a labor dispute with Trane because Trane does not have a collective bargaining agreement with, or employ members of, Respondent.
- 9. On December 28, 1972, Respondent, through its business agent and representative John Donnelly, informed Mandell that its members would not install any vertical fan coil units manufactured by anyone other than Modular and threatened Mandell with labor problem and bloodshed should Mandell insist on dealing with Trane.
- 10. On or about January 9, 1973, Respondent, through its business agent and representative John Donnelly, instructed its members employees of Mandell, not to install the vertical fan coil units when said units were delivered to the Glen Oaks job.
- 11. On or about January 30, 1973, Respondent, through its business agents and representatives John Tracey and John Donnelly, threatened Mandell with labor trouble should Mandell order any vertical fan coil units for the Glen Oaks job from any manufacturer other than Modular.
 - 12. On or about January 30, 1973, Respondent, through its

business agent and representative William Daley, stated it would not install any vertical fan coil units manufactured outside its jurisdiction.

- 13. By the conduct described above in paragraph 10, Respondent has induced and encouraged individuals employed by Mandell, a person engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services.
- 14. By the conduct described above in paragraphs 9 through 12, Respondent threatened, restrained and coerced Mandell, a person engaged in commerce or in an industry affecting commerce.
- 1f. Respondent engaged in the conduct described above in paragraphs 9 through 12, in furtherance of its dispute with Trane as described above in paragraph 8 and with an object to force or require Mandell to cease, using, handling, transporting or otherwise dealing in vertical fan coil units or other related units or products manufactured by Trane and to force or require Mandell to cease doing business with Trane and with North Shore Towers Associates.
- 16. By the acts described above in paragraphs 9 through 12, for the objects described above in paragraph 15, Respondent engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(ii)(B) and Section 2(6) and (7) of the Act.

17. The acts of Respondent described above in paragraphs 9 through 12, occurring in connection with the operations of Mandell, Trane, Modular and North Shore Tower Associates, described above in paragraphs 2 through 4, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 6th day of August, 1973, at 11:00 am, at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the complaint

shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 13th day of July, 1973.

/s/ Samuel M. Kaynard
Samuel M. Kaynard
Regional Director
National Labor Relations Board,
Region 29
16 Court Street
Brooklyn, New York 11241

GENERAL COUNSEL'S EXHIBIT NO. 1(c), STATEMENT OF STANDARD PROCEDURES ATTACHED TO COMPLAINT DATED JULY 13, 1973

FORM NLRD-4668 (1-73)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

GENERAL COUNSEL'S EXHIBIT NO. 1(c), STATEMENT OF STANDARD PROCEDURES ATTACHED TO COMPLAINT DATED JULY 13, 1973

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescanded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branchoffice of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations.

Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GENERAL COUNSEL'S EXHIBIT NO. 1(i), ANSWER TO COMPLAINT DATED JULY 30, 1973

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ICE MACHINE, AIR CONDITIONING AND GENERAL PIPE FITTERS OF NEW YORK AND VICINITY, AFL-CIO, STEAMFITTERS LOCAL UNION 638 OF THE UNITED ASSOCIATION

Case No. 29-CC-374

and

MANDELL & CORSINI, INC.

ANSWER

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ICE
MACHINE, AIR CONDITIONING AND GENERAL PIPE FITTERS OF
NEW YORK AND VICINITY, AFL-CIO, STEAMFITTERS LOCAL UNION
638 OF THE UNITED ASSOCIATION, the Respondent herein, answers
the Complaint as follows:

- 1. Admits the allegations contained in paragraphs 1, 2(a), 2(b), 2(c), 2(e), 2(f), 4(b), 4(c), 4(d), 5 and 6 of the Complaint.
- 2. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2(d), 2(g), 3(a), 3(b), 3(c), 4(a) and 7 of the Complaint.

GENERAL COUNSEL'S EXHIBIT NO. 1(i), ANSWER TO COMPLAINT DATED JULY 30, 1973

- 3. Denies the allegations contained in paragraphs 8, 9, 10,
- 11, 12, 13, 14, 15, 16 and 17 of the Complaint.

WHEREFORE, Respondent respectfully requests the Court to deny the Complaint herein.

Dated: New York, N. Y. July 30, 1973.

Yours, etc.

DELSON & GORDON

By /s/ Ernest Fleischman

a Member of the Firm

230 Park Avenue

New York, N. Y. 10017

TO:

SAMUEL M. KAYNARD, Regional Director Region 29 16 Court Street Brooklyn, New York 11241 Tel. 596-3337; 596-3535

MANDELL & CORSINI, INC. 850 Third Avenue New York, New York 10022

JAMES P. LUNDY, ESQ. Danbury-Brewster Road Brewster, N. Y. 10590

GENERAL COUNSEL'S EXHIBIT NO. 2, RULE 9

RULE IX

CUTTING PIPE AND MAKING UP FITTINGS

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Section I. Pipe up to and including four (4") inches in diameter except sprinkler work, radiator branches, convector branches and coil connections, may be cut, threaded, grooved and have fittings made up by hand or machine on the job or in the shop of the direct employer, at the option of the direct employer. If the said shop is a permanent shop, equipped with permanently installed pipe cutting and threading machinery, then the work shall be done by a Steamfitter working alone. When a direct employer has no permanently installed pipe cutting machinery in his shop, such work shall be done in accordance with Rule V on the job.

- Section II. All fittings on sprinkler work five (5") inches and under shall be made up according to Rule V.
- Section III. All pipe which is cut, threaded, grooved or has fittings made up in a shop under Section I must be labeled before leaving the shop. Labels shall be the size and form as provided by Local Union 638.

Labels shall be obtained by the Employers by written application to Local Union 638, and labels shall bear both the employer's and employee's names, date and book numbers.

be cut and threaded on the job by hand in accordance with Rule V.

Section V. All pipe hangers, except for sprinkler work, made of manufactured and/or fabricated components shall be assembled and erected in accordance with Rule V. Sprinkler Hangers shall be assembled on the job or in the shop of the direct amployer.

Any shop assembled hangers shipped from the employers' shop shall have tags in size and form as provided by Local Union 638.

All hanger rods shall be cut on the job or in the shop of the direct employer.

The erectica only of all supports and structural attachments for work covered by this Agraement is the work of the steamfitter and/or apprentice.

This rule will not apply to hangers for which a purchase order has been written prior to October 2, 1972. This rule becomes fully effective regardless of order data six (6) months after data of Agreement (April 2, 1973).

Section VI. All pipe used for temporary heat having been cut on the job and returned to the shop may be used again.

MELL AND CONSINI, INC. MECHANICAL CONTRACTORS, 850 THIRD AVEING, NEW YORK, NEW YORK 10022

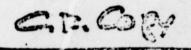
212 693-2255

126,636

March 14, 1973

The Trane Company 60 East 42nd Street New York, N.Y. 10017

Attn: Mr. Del Walker



RE: NORTH SHORE TOWERS -SIDNEY BARBANEL ENGINEERS VERTICAL FAN COIL UNITS

Gentlemen:

This constitutes a letter of intent to purchase some 5,894 Trane Vertical Riser Fan Coil Units, to meet plans and specifications as prepared by Sidney W. Barbanel, Consulting Engineers, with details and formal purchase order to follow.

The total agreed delivered net price for this equipment as of January 8, 1973, is to be:

Your consideration in clearing all pertinent details applying to this order will be greatly appreciated.

Very truly yours,

MANDELL & CORSINI, INC.

Crawford Robertson Director of Purchases

CR: tz

cc: Mr. A.F. Corsini Mr. Howard Dexter

DATE 3/30/73

ORDER NO. 22675R

North Shore Towers

EXTRA

SHIP TO MANDELL AND CORSINI, INC.

The Trane Company 60 East 42nd Street New York, N.Y. 10017

Marcus Avenue, Between Lakeville Roads & Little No. Glen Oaks, Queen, N.Y.

CR.Copy

Attn: Mr. Del Walker - 4/00/78-07 KAND.

act number, and order number must appear on all invoices, packing slips, bills of lading, and boxing.

CONTRACT NO.	WHEN			
7224	Will Advise	3	COPIES OF INVOICES REQUIRED	ALL ORDERS ARE F.O.B. JOB SITE. UNLESS OTHERWISE SPECIFIED.

CONFIRMATION

FURNISH 5,883 "VERTICAL AIR HANDLING UNITS" TO MEET ALL REQUIREMENTS AS SET FORTH IN PLANS AND SPECIFICATIONS, OR AS APPROVED BY SIDNEY W. BARBANEL, CONSULTING ENGINEERS AS FOLLOWS:

SPECIFICATION PARAGRAPH 41; PAGES 15A-85 THRU 15A-87 (ATTACHED). ADDENDUM #3 DATED 11/8/72, ARTICEL 11.1 (RE: PAR. 41, LINE 7.0) (ATT) CONTRACT DRAWINGS HVAC-200 THRU HVAC-317, WITH APPLICABLE DATES TO BE OUTLINED ON "RIDER-A".

EXCEPTIONS TO BASIC SPECIFICATIONS ARE AS FOLLOWS:

(1) "M" TUBING IN LIEU OF "L" TUBING, OR AS APPROVED.

2) 3/8" INSULATION IN LIEU OF 1/2" INSULATION. (3) NO INSULATION ON DRAIN LINES REQUIRED.

(4) NO FILTER SWITCH REQUIRED.

(5) 20 GAUGE SHEET METAL CASING IN LIEU OF 18 GAUGE.

(6) PVC DRAIN IN. LIEU OF COPPER.

THE ABOVE SIX (6) CHANGES SHALL NOT RESULT IN ANY CHANGE IN THE VERTICAL FAN COIL RISER PIPE SIZES FROM SIZES SHOWN ON CONTRACT DRAWINGS.

UNITS ARE TO BE SHIPPED ON PALLETS AND ON OPEN BODY TRUCK FOR READY LIFTING BY CRANE INTO THE BUILDING (S) .

RELEASES, INCLUDING COMPONENTS ARE TO BE AS ADVISED BY MANDELL AND CORSINI, INC.

INCLUDED IN THIS CONTRACT SHALL BE THERMOSTATIC CONTROL OF FANS IN VERTICAL FAN COIL UNITS, AS WELL AS ON-OFF CONTROL OF WATER VALVES. :

CONTINUED ON PAGE 2 INAL DETERMINATION WITH REGARD TO NOTE (2) SHALL BE MADE WITHIN THE NEXT THREE WEEKS.

PURCHASING AGENT/ MANDELL AND CONSINI.

NDOR'S CORY

ANDEL.

ntract CON

DORT

ANDELL AND CORSINI, INC. MECHANICAL CONTRACTORS, 850 THIRD AVENUE, NEW YORK, N.Y. 10022

RATE

DATE 3/30/13

ORDER NO. 22675R

EXTRA

SHIP TO MANDELL AND CORSINI, INC.

The Trane Company

Atoms in . Dai ".

--- North Shore Towers

ntract number, and order number must appear on all invoices, packing slips, bills of lading, and boxing.

CONTRACT NO.	WHEN		
7224	Will Advise	COPIES OF INVOICES REQUIRED	ALL ORDERS ARE F.O.B. JOB SITE, UNLESS OTHERWISE SPECIFIED.

(CONTINUED FROM SHEET 1)

UNITS SHALL BE MANUFACTURED IN A FACILITY THAT EMPLOYS LABOR OF "THE UNITED ASSOCIATION OF JOURNEY MEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA."

SUBMITTAL DETAILS HAVE PREVIOUSLY BEEN FORWARDED FOR APPROVAL.

TOTAL AGREED DELIVERED PRICE:

BILLING FOR THIS PARTICULAR PROJECT IS TO BE AS FOLLOWS:

MANDELL & CORSINI, INC. AS AGENTS FOR NORTH SHORE TOWERS ASSOCIATION 850 THIRD AVENUE NEW YORK, N.Y. 10022

PRIOR TO ANY SHIPMENT, NOTIFY THIS OFFICE 48 HOURS BEFORE PROPOSED DELIVERY.

(Mr. Howard Dexter)

PURCHASING AGENT/MANDELL AND CONSIDER AND

DOR'S COPY

CORSINI TO TRANE COMPANY DATED MARCH 14, 1973, WITH PARAGRAPHS 40 AND 41 OF THE SPECIFICATIONS (EXHIBIT NO. 3) ATTACHED THERETO

DATE 3/30/73

ORDER NO. 22575

EXTRA

The Trans Company 60 East 42nd Street

New York, N.Y. 10017

SHIP TO MANDELL AND CORSINI, INC North Shore Towers Amercus Avenus, Batween Inkeville Roads & Littl Glen waks, Queens, Hew

Cor

Attn: Mr. Del Walker

tract number, and order number must appear on all invoices, packing slips, bills of lading, and boxing.	SHEET	1 01	, 3
attact number, and order number must appear on an involver party			

CONTRACT NO WHEN		
7224	Will Advise	ALL ORDERS ARE F.O.B. JOB SE UNLESS OTHERWISE SPECIFIED.

COMPIRMATION

FURNISH ALL NECESSARY "VERTICAL AIR HANDLING UNITS" TO MEET ALL REQUIREMENTS AS SET FORTH IN PLANS AND SPECIFICATIONS AS PREPARED BY SIDNEY H. BARBANEL, CONSULTING ENGINEERS AS FOLLOWS:

SPECIFICATION PARAGRAPH 41, PAGES 15A-85 THRU 15A-87 (ATTACHED) ADDENDUM \$3 DATED 11/3/72, APPLICATE 11.1 (RE: PAR. 41, LINE 7.0) CONTRACT DRAWINGS HVAC-200 THRU MVAC-317, WITH APPLICABLE DATES TO BE COTLINED ON "RIDER-A".

EXCEPTIONS TO BASIC SPECIFICATIONS ARE AS FOLLOWS:

(1) "M" TUBING IN LIEU OF "L" TUBING.

- (2) 3/8" INSULATION IN LIEU OF 1/2" INSULATION. .
- (3) NO INSULATION ON DRAIN LIMES REQUIRED.

(4) NO FILTUR SHIPCH REQUIRED.

* (5) 20 GAUGE SHEET METAL CASING IN LIEU OF 12 GAUGE.

(6) PVC DRAIN IN LIEU OF COPPER.

THE ABOVE CHANGES SHALL NOT RESULT IN ANY CHANGE IN THE VENTICE PAN COIL RISER PIPE SIZES FROM SIZES SHOWN OH CONTRACT DRAWING

UNITS AFE TO BE SHIPPED ON PALLETS AND ON OPEN BODY TRUCK FOR READY LIFTING BY CRANE INTO THE BUILDING (S) .

RELEASES, INCLUDING COMPONENTS ARE TO BE AS ADVISED BY MANDELL. AND CORSINE, LIC.

INCLUDED IN THIS COMPRACT SHALL BE THURSDETATIC CONTROL OF FAMS IN VERTICAL FAM COIL UNITS, AS WELL AS ON-OFF CONTROL OF WATER VALVES.

CONTINUED ON PAGE 2

ONLY COPY AVAILABLE

PURCHASING AGENT/ MANDELL AND CO

ase order

ASIMI, INC. MECHANICAL CONTRACTORS, 850 THIRD AVENUE, NEW YORK, N.Y. 10022



DATE 3/30/73

ORDER NO. 22575

EXTRA

SHIP TO MANDELL AND CORSINI, INC.

North Shore Towers

The Trans Company

Contract number, and order number must appear on all invoices, packing slips, bills of lading, and boxing.

SHEET 2 OF 3

CONTRACT NO.	WHEN		
7224	Will Advise	3 COPIES OF INVOICES REQUIRED	ALL ORDERS ARE F.O.B. JOB 614 UNLESS OTHERWISE SPECIFIED

(CONTINUED FROM SHEET 1)

UNITS SHALL BE HAMUFACTURED IN A FACILITY THAT EMPLOYS LABOR OF "THE UNITED ASSOCIATION OF JOURNEY MEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CAHADA."

SUBMITTAL DETAILS HAVE PREVIOUSLY BEEN FORMARDED FOR APPROVAL.

TOTAL AGREED DELIVERED PRICE:

BILLING FOR THIS PARTICULAR PROJECT IS TO DE AS FOLLOWS:

MINDELL & CORSINI, INC. AS AGENTS FOR MORTH SHORE TOWERS ABSOCIATION 350 THTRO AVEIUS NEW YORK, HEW YORK 10022

PRIOR TO ANY SHIPMENT, MOTIFY THIS OFFICE 43 HOURS BEFORE PROPOSED DELIVERY.

SEE SHEET 3 OF 3 FOR "ALTERNATES".

(CONTINUED ON SHEET 3)

(Mr. Howard Dexter).

Crawford Pobertson --Director of Purchass. I this fit is the second was MINCUACING ACENT / MANDELL AND C

DELL AND CORSINI, INC. MECHA! L CONTF TORS, 650 THIRD AVENUE, NE "ORK, N."

DATE 3/30/73

ORDER NO. 22673

EXTRA

SHIP TO MANDELL AND CORSINI, INC.

North Shore Towers

The Trane Company

ract number, and order number must appear on all invoices, packing slips, bills of lading, and boxing.

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	7777	
	7223	,

Will Advise

WHEN

COPIES OF INVOICES REQUIRED

ALL ORDERS ARE F.O.B. JOB SITE. UNLESS OTHERWISE SPECIFIED.

(CONTINUED FROM SHEET 2)

"ALTERNATES"

SHOULD WE DESIRE TO RE-INSERT "EXCEPTIONS" 1-6 AS OUTLINED ON SHEET NO. 1 OF PURCHASE ORDER, ADDITIVES WOULD BE AS FOLLOWS:

- 1. TYPE "L" TUBING INSTEAD OF "M" TUBING,
- 2. 1/2" INSULATION INSTEAD OF 3/8" INSULATION,
- 3. ADD SPECIFIED INSULATION TO DRAIN LINES,
- 4. ADD "FILTER SWITCHES" AS PER SPEC.,
- 5. FURNISH 18 GAUGE INSTEAD OF 20 GAUGE CASINGS,
- 6. FURNISH COPPER DRAINS INSTEAD OF PVC,

YOU WILL BE ADVISED OF THE POSSIBLE ACCEPTANCE OF THESE "ALTERNATES" AT AN EARLY DATE.

(Mr. Howard Dexter)

Crawford Robertson Director of, Purchas

IDELL AUD CORSINI, INC. MECHANICAL CONTRACTORS, 850 THIRD AVENUE, NEW YORK, NEW YORK 10022

212 593-2955



March 30, 1973

NORTH SHORE TOWERS - PURCHASE ORDER NO. 22675 THE TRANE COMPANY

RIDER "A"

HVAC Drawings - Prepared by Sidney W. Barbanel

Drawing No.		Date	Drawing	No.	Date
HVAC -200		7/21/72	HVAC -20	04	9/25/72
HVAC -211		7/21/72	HVAC -20	05	9/25/72
HVAC -221		9/25/72	HVAC -20	06	9/25/72
HVAC -221A		8/9/72	HVAC -20	06A	9/25/72
HVAC -221B		10/17/72	HVAC -20	06B	9/25/72
HVAC -221C		10/17/72	HVAC -20	07 (REV	.5) 12/5/72
HVAC -221b		7/21/72	HVAC -30	00	8/9/72
HVAC -221E		9/25/72	HVAC -30	01	8/9/72
HVAC -221F		10/17/72	HVAC -30	02	10/2/72
HVAC -221G		9/25/72	HVAC -30	03	10/2/72
HVAC -221H		7/21/72	HVAC -30	04	10/2/72
HVAC -231		8/9/72	HVAC -30	05	10/2/72
HVPC -240		7/21/72	 HVAC -30	06	10/2/72
HVAC -241		7/21/72	HVAC -30	07	10/2/72
HVAC -251		8/9/72	HVAC -30	08	10/17/72
HVAC -212		8/9/72	HVAC -30	09	10/17/72
HVAC -212A		7/21/72	HVAC -31	10	10/17/72
HVAC -222		7/21/72	HVAC -3	11	10/17/72
HVAC -222A		8/9/72	HVAC -3	12	10/10/72
HVAC -232		9/25/72	HVAC -3	13	10/17/72
HVAC -242		7/21/72	HVAC -3	14	10/9/72
HVAC -252	4.0	8/9/72	HVAC -3	15	9/25/72
HVAC -262		8/9/72	HVAC -3	16	9/25/72
HVAC -203		7/21/72	HVAC -3	17	10/17/72

Crawford Robertson Director of Purchases

Clauril William

Division No. 15A

20.2

HVAC

11.0 . Individual engine fuel oil filters.

Furnish and install on each engine, where indicated on the drawings, a 'Filtral' No. 1705 filter manufactured by Racor Industries Inc., parallel manifolded and valved for continuous operation.

Paragraph 41.-Vertical Air Handling Unit.

Buoparagraph 7.0-Delete this subparagraph in its entirety
and substitute the following.

7.0 Furnish units manufactured by Verticon Atmospherics
Industries, the Trane Co., McQuay Inc. or an approved equal.

Paragraph 43-Refrigeration Machine, Centrifugal Add the following new subparagraph

10.0 / High temperature water protection.

Purnish and install a two position automatic valve in the chilled water return to the chiller controlled by a thermostat riading return chilled water temperature. Furnish and install all controls to stop the flow of water to the chiller and sound an alarm when the chilled water temperature exceeds the setting of the thermostat.

Paragraph 54 Well Water System

Direct this paragraph in its entirety.

Paragraph 57 Electric Heaters

Add the following new subparagraph

4.0 d Electric tracer cable.

Furnish and install electric tracer cable of the type, arrangement and capacity indicated on the drawings and as specified herein.

Cable - Type Ml, 'Easy Heat'.
Wirecraft division, the Singer Co. or an approved equal.

S.W. Barbanel - Cons. Engineer

A.H. Salkowitz

Carl Heimberger - Architects

North Shore Towers Queens, New York (Addendum No. 3)

15A-(ADD. 3)-2 11/8/72

GASKETED 16 GAUGE HOLDING FRAME WITH LOCKING DEVICES/ REINFORCED AND BRACED ANGLE STEEL STEELSTEETURE CONTAINING HOLDING FRAME AND AIRTIGHT STAL TO PLENUM CONSTRUCTION AROUND FILTER BANK BY MEANS OF GASKETED SHEET METAL PANELS, WITH ONE COMPLETE SET OF FILTERS AHEAD OF THE SUPPLY FANS, FRAME SHALL BE CONSTRUCTED FOR EASY REMOVAL OF FILTERS, AND SHALL BE ARRANGED FOR THE INSTALLATION OF

FILTERS SHALL DE SET UP IN A VERTICAL FLAT OR 'V' BANK AS SHOWN ON THE DRAWINGS. THEY SHALL DE THROW-AWAY TYPE. MEDIA SMALL BE FLAME-PROOF, ADMESIVE COATED, NON-MOVEN, PLEATED FAS-RIC. ALL JOINTS CEMENT SEALED, WITH PLASTIC COATED HEAVY STEEL WIRE RETAINER. HOLDING FRAME AND SEALING FRAME. FILTERS SHALL NOT UNLOAD OR CHANNEL WHEN DUST HOLDING CAPACITY IS EXCEEDED UNDER OPERATION. RESISTANCE WHEN CLEAN SHALL NOT EXCEED D.3 INCHES OF WATER GAUGE AT CFM PER UNIT SHOWN OR AS INDICATED.

FILTERS SHALL DE 'CAMDRIDGE-HIGH-FLO' OR AS INDICATED: WITH

65 PER CENT EFFICIENCY OR EGUAL AS APPROVED.

GREASE FILTERS IN THE KITCHEN EXHAUST SYSTEMS. FILTERS SHALL BE OF THE SIZE, AND ARRANGEMENT INDICATED, SUITABLE FOR AND INSTALLED IN KITCHEN EXHAUST HOODS, COMPLETE WITH LOCKED HOLDING FRAMES, END PLATES AND DRIP THROUGHS. FILTERS SHALL DE 2 IN.
THICK, PERMANENT, CLEANABLE, HIGH VELOCITY TYPE AIR FILTERS MOUNTED IN FLAT, OR ANGLE FILTER FRAME WITH 71.2 PER CENT EFFICIENCY AS MANUFACTURED BY THE FARR AIR FILTER COMPANY TYPE
44-H, OR EQUAL AS APPROVED/ ALL METAL, ALTERNATE LAYERS OF FLAT.
AND HERRINGBONE, MEDIA 14 MESH, ZINC ELECTROPLATED STEEL SCREEN,
1/8 IN, ROD REINFORCING, 16 GA. GALV. STEEL CASING, FLAT MITERED CORNERS AND 16 GA. 'I' SECTION. INTERLOCKED, HOLDING FRAME.

PARAGRAPH - 41 * VERTICAL AIR HANDLING UNITS

1.0. GENERAL

CLUMI SHULUS

PRE-FILTERS.

FURNISH AND INSTALL VERTICAL TYPE AIR MANDLING UNITS OF THE TYPE: ARRANGEMENT AND CAPACITIES SHOWN ON THE DRAWINGS AND HEREIN SPECIFIED.

S.W. BARBANEL - CONS. ENGINEER
A. H. SALKOWITZ
CARL HEIMBERGER - ARCHITECTS

COMTINUEDI

- VERTICAL RISERS: REQUIRING AS INSYALLATION ONLY THE PLACEMENT OF THE UNIT ELECTRICAL CONNECTIONS AND COUPLING OF PIPING BETTIEEN UNITS.
- CONSTRUCTION
- 201 CASING A MINIMUM OF 18 GAUGE STEEL: INSULATED INTERNALLY WITH ACCUSTICAL AND THERMAL INSULATION COMPLETLY WATERPROOFED.
- POUR WAY DEFLECTION, HINGED FOR ACCESS TO UNIT. INTERIOR.
- 2.3 RETURN AIR GRILLE " ANODIZED ALUMINUM: FIXED LOUVER: HINGED FOR ACCESS TO INTERIOR.
- TO TUBE SURFACE: NUMBER OF ROWS TO MAINTAIN CONDITIONS INDICATED
 ON THE DRAWINGS.
- BLOWER AND MOTOR FACTORY INSTALLED INTERGRAL ASSEMBLY
 WITH GUICK DISCONNECT PLUG AND DESIGNED FOR EASY REMOVAL THROUGH
 THE RETURN AIR GRILLE. MOTOR: PERMANENT SPLIT CAPACITOR WITH
 BUILT IN THERMAL OVERLOAD PROTECTION. BLOWER CENTRIFUGAL TYPE:
 ALUMINUM CONSTRUCTION: DYNAMICALLY BALANCED.
- 2.6 FILTER FIBERGLASS DISPOSIBLE TYPE, ONE INCH THICK.
- 2.7 CONDENSATE PANS INSTALL INSULATED CONDENSATE PANS UNDER CODLING COIL AND AT BOTTOM OF UNIT, ARRANGED TO TRAP ALL CONDENSATE.
- PIPING FURNISH UNITS WITH FACTORY INSTALLED RISERS,

 CONNECTED TO COILS AND DRAIN PAN. SUPPLY RISER, FURNISH WITH

 SHUT OFF VALVE, AN AUTOMATIC BALANCE FLOW VALVE, FACTORY SET TO

 REQUIRED GPM. AND TWO POSITION AUTOMATIC VALVE CONTROLLED BY

 THERMOSTAT RETURN RISER, FURNISH WITH SHUT OFF VALVE AND MANNUAL

 AIR VENT. INSTALL FLEXIBLE CONNECTIONS BETWEEN COILS AND RISERS
- ALL RISER PIPING 'TYPE L' COPPER EXTENDING APPROXIMATELY

 8 INCHES ABOVE UNIT AND 12 INCHES BELOW: SUPPLY AND RETURN PIPE

 SIZING INDICATED ON THE DRAWINGS: CONDENSATE DRAIN; SIZE AS

 SHOWN ON PLANS:
- 3.0 INSULATION

S.W. BARBANEL - CONS. ENGINEER

A. H. SALKOMITZ

CARL HEIMBERGER - ARCHITECTS ONLY COPY AVAILABLE QUEENS! NEW YORK

ARAGRAPH - 41 * VERTICAL AIR MARDLING UNITS

PLASTIC FOAM INSULATION SIMILAR TO OWERS CORNING TYPE 'O.C' FLEX-IBLE TUBING. SEAL ALL JOINTS BETWEEN EACH UNIT TO FORM A COMPLET VAPOR SEAL.

'cooo CONTROL

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1.0

FURNISH UNIT WITH SURFACE MOUNTED ROOM THERMOSTAT.

THERMOSTAT WILL CONTROL TWO POSITION AUTOMATIC VALVE IN SUPPLY
PIPE TO MAINTAIN DESIRED SPACE TEMPERATURE. FURNISH SUD BASE
WITH FOUR CUTTON 'OFF-MIGH-MED-LOW' FAN SPEED CONTROL AND AUTOMATIC SEASON CHANGEOVER.

FURNISH SWITCH TO PREVENT UNIT OPERATION UNLESS FILTER IS

.... DOUBLE DISCHARGE UNITS.

WHERE INDICATED ON THE DRAWINGS , FURNISH DOUBLE DISCHARGE UNITS IN THE ARRANGEMENT INDICATED.

FURNISH UNITS WITH DOUBLE RETURN AIR GRILLES MATCHING SUPPLY ARRANGEMENT.

BAFFLES IN DISCHARGE AND RETURN SECTIONS TO ELIMANATE SOUND TRAVEL DETWEEN ROOMS AND ACT AS A LINE OF SIGHT BAFFLE.

.... INSTALLATION IN HIGH RISE DUILDINGS.

IN INSTALLATION WHERE THE HEIGHT OF THE BUILDING IMPOSES
"STATIC HEADS BEYOND PRESSURE RATING OF STANDARD UNITS: FURNISH
-UNITS WITH ALL COMPONENTS DESIGNED TO ACCEPT THE COMBINED STATE
AND DYNAMIC HEAD IMPOSED ON UNIT AT POINT OF INSTALLATION:

OR AN APPROVED EQUAL STE ADD. NO. 3 OF WOLTE

TRANG - MCGUAY

A. H. SALKOWIYZ
CARL HEIBBERGER - ARCHITECTS

CUEERS , REW YOUL

1	BEFORE THE NATIONAL LABOR RELATIONS BOARD
2	Twenty-ninth Region
3	x
4	In the Matter of:
5	ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, : HYDRAULIC, SPRINKLER, PNEUMATIC TUBE,
6	COMPRESSED AIR, ICE MACHINE, AIR CONDITION -: ING AND GENERAL PIPE FITTERS OF NEW YORK
7	AND VICINITY, AFL-CIO, STEAMFITTERS LOCAL: CASE NO. UNION 638, UNITED ASSOCIATION, 29-CC-374
8	-and-
9	MANDELL & CORSINI, INC.
11	: x
12	16 Court Street
13	Brooklyn, New York September 10, 1973
14	Pursuant to notice, the above-entitled matter
15	came on for hearing at 11:00 o'clock a.m
16	BEFORE:
17	SAMUEL ROSS, Administrative Law Judge
18	APPEARANCES:
19	ALVIN BLYER, ESQ., Counsel for the General Counsel
21	ERNEST FLEISCHMAN, ESQ., Of Counsel
22	Delson & Gordon, Esqs., 230 Park Avenue
23	New York, New York Appearing on behalf of Enterprise Association.
24	Enterprise Association.

APPEARANCES: (Continued)

JAMES P. LUNDY, ESQ.,

Danbury-Brewster Road Brewster, New York Appearing on behalf of the Respondent.

			40			
1		CONTE	NIS			
2	WITNESSES:	DIRECT	CROSS	REDIRE	CT	RECROSS
3	August Corsini	13	33	67		68
4	Emile H. Munier	73	79			
5	Paul Schembeck	83	90	92		
6	Gerald Chait	103	106	118		
7	John Tracey	124	128	129		
8						
9	EXHIBITS:	FOR IDE	NTIFICA	TION	IN	EVIDENCE
10	General Counsel's					
11	1A-L		5			6
12	2		14			15
13	3		16			
14	4		66			67
15	Respondent's					
16	, 1		57			
17						
18						
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24						

* * *

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HEARING OFFICER: Where did you live, Mr. Corsini?
THE WITNESS: 14 Sutton Place South, New York City.
HEARING OFFICER: You may proceed.

Whereupon,

AUGUST CORSINI,

a witness, called by and on behalf of the General Counsel, having been previously sworn, testified as follows:

DIRECT EXAMINATION

- Q (By Mr. Blyer) Mr. Corsini, what is your position with Mandelland Corsini, Inc.?
- A I am chairman of the board and chief executive officer.
- Q And where is Mandell and Corsini's offices located?
- A 850 Third Avenue, New York City.
- Q And what is the business of Mandell and Corsini?
- A We are machanical contractors. We install hearing, ventilating and air conditioning systems.
- C Do you employ steam fitters?
- A Yes, we do.
- Q Are they represented by any labor organization?
- A Local 638.
- Q Do you presently have a contract with Local 538?
- A Yes, we do.

MR. BLYER: Your Honor, I would like to have marked for identification as General Counsel Number 2, the

1	trade agreement between Local 638 and Mandell and
2	Corsini, Inc.
3	(Document above-referred to marked General Counsel's Ex. No 2 for identification.)
5	Q Mr. Corsini, I show you what has been marked for
•	identification as General Counsel's Exhibit Number 2.
7	Can you identify that, please?
8	A Yes, sir, I can.
9	Q What is it, please?
10	A It is the trade agreement between Mechanical
11	Contractors Association and the Enterprise Association,
12	Local 638.
13	Q Now, are you a member of the Mechanical Contractors
14	Association?
15	A Yes, we are.
16	MR. BLYER: At this time, Your Honor, I would
17	like to offer General Counsel's Number 2 into evidence.
18	HEARING OFFICER: Any objection, Mr. Lundy?
19	MR. LUNDY: No objection.
20	HEARING OFFICER: Mr. Fleischman?
21	MR. FLEISCHMAN: I just have to check to see if
22	it is the same.
23	HEARING OFFICER: Take your time.
24	MR. FLEISCHMAN: No objection.
25	HEARING OFFICER: General Counsel's Exhibit 2 is

1 received in evidence (Document previously marked 2 General Counsel's Ex. No. 15 2 was received in evidence.) 3 HEARING OFFICER: Mr. Fleischman, which is the provision that you were referring to in your opening 5 statement? 7 MR. FLEISCHMAN: Rule 9. 8 HEARING OFFICER: Thank you. 9 MR. FLEISCHMAN: My page numbers are different. 10 HEARING OFFICER: The one that starts with cutting 11 pipes and making up fittings? 12 MR. FLEISCHMAN: That is correct. 13 HEARING OFFICER: Proceed. 14 Mr. Corsini, does Mandell and Corsini presently Q 15 have a contract with North Shore Towers Association? 16 Yes. we do. 17 And what does that contract involve? 18 It invokes the installation of a total energy 19 plant, boilers, refrigeration machines, piping, duct 20 work, vertical fan coil units. 21

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They are the owner and builders of North Shore Towers.

Who is North Shore Towers Association?

You mentioned that the contract with North Shore requires you to install vertical fan coil units; is that

correct?

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A That is correct.

Q Is it any more specific on this issue of vertical fan coil units?

A Yes, there is a technical specification that spells out what is to be installed.

MR. BLYER: I would like this to be marked for identification as General Counsel Number 3, contract specifications.

(Document above-referred to marked General Counsel's Ex. No. 3, for identification.)

HEARING OFFICER: These specifications are in connection with the fan coil units?

THE WITNESS: Yes, Your Honor.

Mr. Corsini, Ishow you what has been marked for identification as General Counsel 3. Can you identify that, please?

A Yes, I can.

Q What is it, please?

A It is a part of the technical specification for North Shore Towers.

Q And can you be more specific?

A It's paragraph 4.1 that specifies the vertical fan coil units.

MR. BLYER: I would like to offer this into evidence,

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Your Honor.

HEARING OFFICER: Any objection, Mr. Lundy?
MR. LUNDY: No objection.

HEARING OFFICER: Mr. Fleischman?

MR. FLEISCHMAN: Let me just look at this.

I don't have any objection to the document but I think these units were also used in connection with heat, apart from air conditioning. Am I correct?

HEARING OFFICER: Right now we are interested -MR. FLEISCHMAN: I said I have no objection to
the document.

HEARING OFFICER: Way I bring that out. I asked that question purely out of curiosity. You may bring it out, it is in connection with heat as well.

General Counsel Exhibit 3 is received.

(Document previously marked General Counsel's Ex. No. 3 was received in evidence.)

Mr. Corsini, will you tell us what particular type of vertical fan coil the specifications require you to supply?

A They mentioned Verticon as made by Atmospheric Control Industries or approved equally.

Q Now, with regard to these vertical fan coil units --

MR. FLEISCHMAN: Wait a while, you know, I would

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like to know -- is this -- the question that you asked, is the answer in the General Counsel's Exhibit Number 3? Is it the best evidence? I don't know if it is in here because I haven't had a chance to read it carefully.

MR. BLYER: It is, but I asked a question in order to make it clear, it relates to paragraph 7.0 on the last page of G.C. 3.

MR. FLEISCHMAN: All right.

- Q With regard to these vertical fan coil units, is there a new or old type of system?
- A New system.
- Q Can you explain how it differs from the old?
- A The old system you had to have a fan coil unit under each window.

Between the windows you would have vertical pipes which would carry the hot and chilled water for hearing and air conditioning.

And from those vertical pipes to the unit under the window there would be horizontal corner branches running back and forth. That was the old system.

The new system is a vertical fan coil unit that is installed in between the windows and in that way you don't have the branch work, you just have a unit sitting in between the two windows.

Q Now, does this new type of vertical fan coil unit

is the the coloured the section .

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1	eliminate work that was traditionally done on the job
2	by steam fitters?
3	MR. FLEISCHMAN: I object.
4	HEARING OFFICER: On what ground?
5	MR. FLEISCHMAN: Well, traditionally done by
6	steam fitters
7	HEARING OFFICER: Are you contending this man
8	is not expert enough to testify or
9	MR. FLEISCHMAN: No foundation has been laid.
10	HEARING OFFICER: All right, lay a foundation.
11	Objection sustained.
12	Q Mr. Corsini, prior to becoming an executive with
13	Mandell and Corsini, what did you do?
14	A I worked for a large mechanical contractor,
15	R-a-i-s-l-e-r Corporation by name.
16	Q And how long, when did you do that?
17	A I worked for Raisler for about 14 years.
18	And prior to that?
19	A School.
20	Q In the course of your job, do you have occasion to,
21	do you oversee the work of steam fitters?
22	A Yes, on occasion.
23	HEARING OFFICER: What is the nature of your
24	experience, what is the nature of your knowledge as to

what the former method of installing these things was,

and the change that you are testifying about? In other words there is an objection as to your qualification to testify that something is different than it formerly had been?

MR. FLEISCHMAN: No, the objection also went, mainly went to the fact that the statement traditionally done by steam fitters was a conclusion.

And --

Proceed.

HEARING OFFICER: What is your knowledge of what traditionally is done by steam fitters and what is not traditionally done by steam fitters?

THE WITNESS: In this specific case with the old type system, the work between the vertical pipe between the two windows let's say here, over to the unit under the window that branch piping and those risers were done by steam fitters.

HEARING OFFICER: How did you know that? THE WITHESS: I worked in construction for 25 years, 24 years something like that.

> HEARING OFFICER: With steam fitters? THE WITNESS: Yes, sir. HEARING OFFICER: In this type of work? THE WITNESS: Yes, sir. HEARING OFFICER: Objection is overruled.

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I will restate the question. Does the new system, these vertical fan coil units, eliminate any type of work that was traditionally done on the job by steam fitters?

A Yes, it does.

MR. PLEISCHMAN: I object, because --

HEARING OFFICER: I overruled the objection.

MR. FLEISCHMAN: No, but may I make myself heard?

HEARING OFFICER: Yes.

MR. FIEISCHMAN: The witness hasn't stated exactly what work was done traditionally on the old type unit, what work is eliminated, and --

HEARING OFFICER: You can cross-examine with respect to that Counsel is trying his case.

MR. FLEISCHMAN: It is conclusory.

HEARING OFFICER: Overruled.

You object on the grounds that the question calls for a conclusion?

MR. FLEISCHMAN: That is correct. All he said was traditionally the work was limited --

HEARING OFFICER: You haven't said that until now. Up until this point you said, "I object." I don't know the mature of your objection when you object.

MR. FLEISCHMAN: Just a few minutes ago I did say that my basic objection --

HEARING OFFICER: A few minutes ago you objected

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	this man's knowledge as to what traditionally was done
	by steam fitters, and he has qualified that by saying he
,	has worked with steam fitters for 25 years and so he is
.	in a position to know what traditionally is done by steam
5	fitters, and I overruled your objection on that ground
6	Then, your objection to this particular question is
7	on the grounds that it calls for a conclusion?
8	MR. FLEISCHMAN: That is correct
9	HEARING OFFICER: I believe you are correct in
0	that statement and I sustain the objection. Now proceed.
1	FURTHER DIRECT EXAMINATION
2	Q (By Mr. Blyer) What type of work, if any is
3	eliminated by this new type of system?
4	A The branch piping from the riser over to the
5	horizontal fan coil unit.
6	HEARING OFFICER: And that is work that was pre-
7	viously done by steam fitters?
18	THE WITNESS: Yes, sir.
19	Q When did you enter into your contract with North
20	Shore Towers Associates?
21	A In the fall of 1972.
22	Q Pursuant to that contract and with regard to the
23	purchase and installation of vertical fan coil units,
24	what action did you take?
25	A We solicited bids from suppliers and subcontractors

1	business agent from 638, John Donnelly?
2	A Yes, I do.
3	Q Can you please tell us about that conversation,
4	what he said to you and what you said to him?
5	HEARING OFFICER: What is the date first? The date
6	of that conversation?
7	THE WITNESS: December 28th.
8	Q What year, please?
9	A 1972.
10	My secretary buzzed me and said Mr. John Donnelly
11	was on the telephone and would I talk to him, and I said
12	yes I would.
13	I picked up the phone and he said, "Augie
14	Corsini, this is John Donnelly." And he wanted to know
15	who the vertical fan coil units were purchased from for
16	the North Shore Job.
17	I told Mr. Donnelly that they were purchased from
18	the Train Company. Mr. Donnelly informed me that they
19	were not purchased from M.E.C.
20	HEARING OFFICER: From who?
21	THE WITNESS: M.E.C. which is a vertipak unit,
22	Modular Energy Corporation.
23	HEARING OFFICER: Go ahead.
24	A That he wouldn't his men would not install the
25	units. He would not be able to control the men, it would

1	be a severe labor problem and bloodshed at which point
2	I hung up on Mr. John Donnelly
3	Q You referred to the units as vertipak. How is
4	vertipak related, if it is at all to M.E.C.?
5	A It is the trade name for the M.E.C. unit.
6	Q What type of unit are you talking about?
7	A Vertical fan coil unit.
8	HEARING OFFICER: Is this a competitive unit to the
9	one that Train makes?
10	THE WITNESS: Yes, sir.
11	HEARING OFFICER: Is there any difference technical
12	ly between the two?
13	THE WITNESS: Just a few technical things, they
14	run the pipe a little differently but it is basically the
15	same unit.
16	HEARING OFFICER: The same function?
17	THE WITNESS: Yes, sir.
18	Q Which employees of Modular Energy Corporation
19	are covered by the 638 contract?
20	A Steam fitters.
21	Q And what type of work do these steam fitters
22	perform for Modular?
23	A I would assume they I don't know for sure.
24	I would imagine they put the unit together.
25	MR. FLEISCHMAN: I object.

HEARING OFFICER: The objection is sustained. 1 2 Strike it. Has anyone told you what type of work they do? 3 Yes, I was told. 5 HEARING OFFICER: That is hearsay. Objection sustained. 7 MR. BLYER: Your Honor, I believe it would not be hearsay if the witness would be permitted to finish 9 answering the question. 10 To the effect --11 HEARING OFFICER: If you are going to talk about a 12 conversation that he had with an officer or official of 13 the respondent, I would like you to start the question 14 with identification of the person who gave this informa-15 tion to the witness so that I will know in advance whether 16 or not it is hearsay or not hearsay. 17 Did you have a conversation at any time with Mr. 18 John Connelly, Mr John Tracey or Mr. William Daly 19 regarding what steamfitters do for Modular? 20 I was told they assemble the unit. 21 HEARING OFFICER: First told by whom and when? 22 THE WITNESS: Well, I was told by Mr. John Donnelly 23 that the units were assembled by steamfitters Local 638. 24 HEARING OFFICER: When were you told that?

THE WITNESS: I would imagine Comewhere around the

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1	28th or between the 28th of December, I had another
2	meeting with members of Local 638.
3	HEARING OFFICER: You mean in this telephone
•	conversation?
5	THE WITNESS: Not the telephone conversation
6	HEARING OFFICER: Now, the telephone conversation
7	that you testified about was December 28th?
8	THE WITNESS: That is correct.
9	HEARING OFFICER: Now then, you had another con-
10	versation with Mr. Donnelly on December 28th?
11	THE WITNESS: No, sir.
12	HEARING OFFICER: Besides that telephone conversa-
13	tion?
14	THE WITNESS: No.
15	HEARING OFFICER: So that you didn't find this
16	out on December 28th; is that correct?
17	THE WITNESS: No, not from Mr. Donnelly.
18	HEARING OFFICER: When and from whom did you find
19	out?
20	THE WITNESS: Well, Mr. Gerald Chat, C-h-a-i-t,
21	who was to see me regarding the purchase
22	HEARING OFFICER: Who is Gerlad Chait?
23	THE WITNESS: He is with Modular Energy Corpora-
24	tion.
25	HEARING OFFICER: That would be hearsay, proceed.

1	Q Can you recall when Mr. Donnelly told you what you
2	have testifed to?
3	MR. FLEISCHMAN: I object,
4	Q Relating to the vertical fan coil unit.
5	HEARING OFFICER: Overruled.
6	A January
7	MR. PLEISCHMAN: Well, he testified that Mr. Chait
8	told him about.
9	HEARING OFFICER: He testified he was told by
10	Mr. Domelly, he admitted that he hasn't been followed
11	by Mr. Donnelly on December 28th and now General Counsel
12	is trying to find out when Mr. Donnelly told him that.
13	The objection is overruled
14	Q Do you recall?
15	A January 30th.
16	Q Of what year, sir?
17	A 1973.
18	Q Did you have another conversation on January 30th
19	1973 with any business agent from 638?
20	A Yes, I did.
21	Q Can you please tell us who had you the conversa-
22	tion with and where it took place and what was said to
23	you and what you said?
24	A There was a meeting of some business agents from

Local 638, some board of drectors of the Mechanical

Contractors Association and the Building Trades Employers
Association officers at 711 Third Avenue.

I had a conversation with Mr. John Tracey and Mr. John Donnelly before the regular meeting at which time both mentioned to me I should buy the units from M.E.C. to avoid any labor problems.

- Q Did you respond to them?
- A I just mentioned that I bought units from the Train Company.
- Q Was anything else said?
- A Not at that time.
- Q Was there a second conversation that day any anyone from 638?
- At the meeting Mr. William Daly mentioned that units made by 638, M.E.C., were being shipped to Cleveland, Ohio, and that units made out of the jurisdiction of 638 would not be accepted in New York City
- Q Who is Mr. William Daly?
- A Business agent for Local 638.

HEARING OFFICER: I don't know if I understood you correctly. Mr. Daly, who is he?

THE WITNESS: Mr. William Daly is a business agent for Local 638

HEARING OFFICER: He said that M.E.C. made units made by members of 638?

1	THE WITNESS: Correct.
2	HEARING OFFICER: Are going to Cleveland?
3	THE WITNESS: Being shipped out of New York, yes,
4	sir.
5	HEARING OFFICER: And that units not made by M.E.C.
6	would not be installed in New York City; is that what
7	you said?
8	THE WITNESS: Yes.
9	Q Sometime shortly after that meeting on the 30th of
10	January of '73, did you have occasion to meet Mr.
11	Gerald Chait?
12	A Yes, I did.
13	Q Can you tell us when that meeting took place?
14	A The end of January, sometime in February, I don't
15	remember the exact date.
16	Q And please tell us where this meeting took place
17	and what its purpose was?
18	A Mr. Chait and myself went over to East 58th
19	Street to look at some M.E.C. units installed in a
20	very large apartment building.
21	Q What did you observe?
22	A I observed units installed and being installed.
23	Q What type of unit?
24	A Vertical fan coil units.
25	Q And did you observe who made those units?

1	A On some of the units there was a sticker that
2	said Ronnell Systems and I didn't go up much further in
3	the building. I did see the units with a little U.A.
4	sticker.
5	Q What does the U.A. sticker stand for?
6	A United Association.
7	Q Do you know who manufactured those vertical fan
8	coil units?
9	A Well, supposedly manufactured by M.E.C.
0	Q Do you know any other building in New York City
1	or within the jurisdiction of Local 638 that presently
2	has in it vertical fan coil units?
3	A No, I do not.
4	Q The one at East 58th Street does have a vertical
5	fan component which would have been manufactured by
6	Modular?
7	A Yes, sir.
8	HEARING OFFICER: What is the relevance?
9	MR. BLYER: I think, Your Honor, it would become
20	very relevant to show the object of the business agents'
1	behavior, namely, that as I stated in my opening state-
2	ment, that Local 638 in this case was not concerned with
3	preserving on the job work, but rather, was concerned with

HEARING OFFICER: You answered my question,

having Mr. Corsini's firm purchase equipment --

1	Contin	nue.
2	Q	Is Modular Energy Corporation a party to the
3	same (collective bargaining agreement that Mandell and
4	Corsi	ni subscribed to?
5	A	Yes, sir.
6	Q	They are?
7	A	Yes.
8	Q	They are a member of the Mechanical Contractors
9	Assoc	iation?
0	A	No, they are not.
1	Q	So they have a separate contract with 638?
2	A	Yes.
3	ચ	Are you familiar with this contract?
4	A	No, I amnot.
15	Q	How do you know that it is the same or is it the
16	same?	
17	A	Well, usually it is one agreement signed by
18	anyon	e with Local 638.
19	4	Are you familiar with any provisions in your con-
20	tract	with 638 that also are in the contract between
21	638 a	nd Modular?
22		MR. FLEISCHMAN: I object, he said he didn't know.
23		HEARING OFFICER: Sustained.
24		MR. BLYER: Your Honor, I would appreciate it if he
25	answe	rs the question. I think I asked him a different

question.

HEARING OFFICER: If you want the contract with Modular Energy Corporation in evidence you have a method of getting it.

You have a method of getting the contract here and we workt speculate whether the two contracts are the same or they are not the same.

This witness's knowledge of what somebody else's contract contains at best would be rather poor.

MR. BLYER: I have no further questions of this witness, Your Honor.

HEARING OFFICER: You may cross-examine. Mr. Lundy, did you have any questions?

MR. LUNDY: No questions, Your Honor.

CROSS-EXAMINATION

(By Mr. Fleischman) Did you furnish the Labor
Board with a statement in connection with this case?

A Yes, I did.

MR. FLEISCHMAN: May I have a copy of it please?

MR. BLYER: Here is the original and we have the second one.

(Document handed to Mr. Fleischman)

HEARING OFFICER: We will take a recess while you have an opportunity to study it.

(Short recess taken.)

1	HEARING OFFICER: On the record.
2	Let's proceed, Mr. Fleischman.
3	Q Mr. Corsini, how long has Mandell and Corsini
4	been a member of the Mechanical Contractors Association?
5	A For nine or ten years.
6	Q That is during the entire time that you have been
7	associated with Mandell and Corsini?
8	A Yes, I think we made application after we were in
9	business about one year.
10	Q Do you hold any post with the Mechanical Contrac-
11	tors Association?
12	A Yes, I do.
13	Q What one is that?
14	A I am on the board of directors.
15	Q How long have you been on the board of directors?
16	A A year this past spring.
17	Q Did you ever hear of a manufacturers' committee
18	set up by the M.C.A. and Local 638?
19	A Yes, I have.
20	Q And when was that committee set up?
21	A During the negotiations last summer. '72.
22	Q What was the purpose or the aim of the committee?
23	A . To discuss manufactured items relating to our
24	business.
25	HEARTMA OURTCER. Paleting to what?

HEARING OFFICER: Falating to what?

1		THE WITNESS: Our industry.
2	Q	Were you a member of that committee?
3	A	Yes, I am.
4	Q	Did you ever hold any meetings?
5	A	No, sir, we have not.
6	c	Never met?
7	A	With 638, no.
8	Q	Just met among your own members of the committee?
9	À	Once.
10	Q	Who else was on that committee?
11	A	On our committee, Mr. Reier of Afco Engineering,
12	Mr Wil	dflower of J.T. Falk, F-a-1-k.
13		Myself, and I don't remember the other member.
14	and the same of	HEARING OFFICER: What is the relevance of this
15	cross-	examination?
16		MR. FLEISCHMAN: It will connect in with testimony
17	which w	fill be brought out on behalf of Local 638.
18		HEARING OFFICER: It is outside the scope of
19	direct	examination and as much as I find the interest
20	being -	
21		MR. FLEISCHMAN: I didn't intend to pursue it
22	any fur	rther.
23		HEARING OFFICER: All right, proceed.
24	Q	When did you let the contract to Train?
25	A	Verbally in December of '72.

1	Q When did they start manufacturing it?
2	A Late Spring of '73.
3	Q Did you tell them that they had the contract in
4	December of '72?
5	A That is correct.
6	Q You were committed to that contract?
7	A That is right.
8	Q Did you accept any bids after December of 1972
9	from any other firm?
10	A I believe they were all in my hands before the
ıı	contract was let.
12	Q When you asked for bids on the job did you mail
13	letters to various manufacturers?
4	A We sent out post cards to each and every manufac-
15	turer of a particular item we were interested in.
16	Q That is vertical fan coil units?
17	A Correct.
18	Q How many cards did you send out?
19	A As I mentioned before, International Fan Coil
20	Unit Company, Train, McQuay, Whalen Vertipak.
21	Q Vertipak is Modular?
22	A That is correct.
23	Q As a matter of fact, Modular contacted you,
24	rather than you contacting them, and they gave you their
25	bid; isn't that the way it worked, rather than you inviting

them?

A Generally cards go out to every supplier that we need prices from on a job.

HEARING OFFICER: You are not answering the question. You were asked --

THE WITNESS: We send out cards of inquiry.

HEARING OFFICER: That is not the question you were asked. Read the question.

(Lass question read back.)

A No.

Q When did you last speak to Modular about this job?

A December I had a meeting with Mr. Chait and I went to look at his unit the end of January, the beginning of February.

Isn't it a fact that you went to look at his unit because you were still considering Modular as a possible manufacturer of the vertical fan coil unit?

A I looked at his units because I was interested in installing vertical fan coil units.

HEARING OFFICER: But you had already let a contract to Train at that time?

THE WITNESS: Correct.

You had no discussion with Mr. Chait as in February and March regarding price and how much he could furnish the units for on this job?

1	A The discussion of price with Mr. Chait regarding
2	this job were discussed in December. As a matter of
3	fact I believe December 13th.
4	Q And never discussed thereafter?
5	A Not that I remember.
6	Q After you let the contract to Train in December,
7	1972, did you at any time tell Mr. Chait that the con-
8	tract had not been awarded as yet?
9	A No. I don't think so.
10	HEARING OFFICER: Is the contract with Train in
11	writing?
12	THE WITNESS: Yes, sir, it is.
13	HEARING OFFICER: This document which is in evidence
14	as General Counsel's Exhibit 3 is not has nothing to
15	do with the contract with you and Train?
16	THE WITNESS: No, sir.
17	HEARING OFFICER: That is part of your contract
18	with North Shore Towers?
19	THE WITNESS: Right.
20	Q Did you testify that it was your understanding
21	that when you visited the apartment house at East 58th
22	Street with Mr. Chait of Modular, it was only for the
23	purpose of seeing how their units looked and how they
24	operated?
25	A Wm Cheit wented me to look at the units which I

Mr. Chait wanted me to look at the units which I

•

was happy to do and we went over to see the installation of his particular unit at East 58th Street.

And it had nothing to do with the work that you were doing at North Shore Towers, Glen Oaks?

A No.

Q Glen Caks?

A Glen Oaks.

HEARING OFFICER: What was the purpose of that Wait?

THE WITNESS: We wanted to look at the units to see how they are installed and to take a look at his unit. That is the first time I had a chance to look.

HEARING OFFICER: Why would he be interested in your looking at his units if you had already purchased other units?

THE WITNESS: Well, for a few reasons. I am sure with an order this large there is always a possibility that if a unit is disapproved by the architect and engineer, that he has a chance of negotiating the contract with me.

It happens in our industry that on many occasions if a particular product does not meet engineer's
specification or for some reason the owner does not want
that unit, it is disapproved, at which time I have to
go out and renegotiate for that particular item of

equipment

HEARING OFFICER: And at that point when you went to see this it m on 58th Street, had the Train unit been approved or disapproved?

THE VITNESS: It was not either approved or disapproved. It takes generally I would say 30 to 60 days by the time it goes through all the channels, it goes from the owner to the architect to the engineer and then all the way back.

HEARING OFFICER: Was your contract with Train subject to the approval of the owner and engineer?

THE WILNESS: Yes, sir.

HEARING OFFICER: So that when you say that you were committed, you were committed only to the extent that if the owner and engineer disapprove it, you were no longer committed?

THE WITNESS: That is right. They prepare shop drawings and a complete submittal.

HEARING OFFICER: I understand.

You told Mr. Chait that when you met him at the 58th Street job at the end of January that the job had been let to Train?

A I don't remember exactly what we discussed, no.

Mr. Chait was leaving for an industry exhibition, I

think it was in Chicago, and he was in a hurry, he had

1	to catch a plane and we went there before he left for h
2	out of town show.
3	Were you familiar that the collective bargaining
4	agreement called for risers to be installed by Local
5	638 men?
6	A Correct.
7	Q And you were aware, were you not, that the speci
8	fics provided for the installation of risers factory
9	installed?
10	A Correct.
11	Now, what about the cutting of the branches?
12	Were you aware that these units came already precut
13	and preinstalled? That is, with respect to branches?
14	A Yes.
15	Q And branches in the past had been cut by the
16	direct employer, am I correct?
17	A Branches were cut on the job site.
18	Q And were you a direct employer in connection with
19	this job or are you a direct employer vis a vis Local
20	6381
21	A Yes.
22	Q Do you also have a
23	HEARING OFFICER: Excuse me, the Vertipak units,
24	do they have risers in the units?
25	THE WITNESS: Yes, they do.

1	HEARING OFFICER: Are those made in the shop
2	or on the job?
3	THE WITNESS: In the shop.
4	HEARING OFFICER: What about the branches on the
5	Vertipak?
6	THE WITNESS: Same way, in the shop.
7	HEARING OFFICER: Proceed.
8	Q And are 638 men used to cut risers and connect
9	the branches?
10	A Yes.
11	Q At Modular?
12	A I am told yes.
13	HEARING OFFICER: Who was doing the installing
14	of these Train units? Who was supposed to install the
15	Train units?
16	THE WITNESS: Steam fitters.
17	HEARING OFFICER: Whose epployees?
18	THE WITNESS: My employees, yes.
19	HEARING OFFICER: Had you bought from Modular,
20	would it be your employees or Modular employees who would
21	be installing the units in the North Shore Towers Build-
22	ing?
23	THE WITNESS: It would be my employees.
24	HEARING OFFICER: Proceed.
25	Q Now, you testified that you were an installer. Do

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1 you have a shop? 2 Yes, we do. 3 In fact how many shops do you have? One shop. 5 Only one? 2 Right. 7 Do you have machinery there? Q Yes, we do. 9 Is your shop a permanent shop as that term is Q 10 used in Rule Nine? 11 Yes, it is. 12 These coil connections that you have on this 13 particular job, are they silver soldered or braised onto 14 each other? 15 They are soldered on, yes. 16 HEARING OFFICER: When you refer to this particular 17 job, are you referring to the vertical coil units? 18 MR. FLEISCHMAN: That is correct, the vertical 19 coil units at the North Shore Glen Oaks job. 20 HEARING OFFICER: You are talking about the units 21 that were purchased from Train? 22 MR. FLEISCHMAN: That is correct. 23 HEARING OFFICER: It was kind of vague, and I didn't 24 understand. Proceed. 25

The coil connections and branches if purchased

1	from Modular would have been also soldered on; am I
2	correct?
3	A Correct.
4	9 Now, these branches and coil connections are not
5	threaded?
6	A No, they are not.
7	MR. LUNDY: For clarification when you said these
8	the question was asked "These", were you referring to
9	the Train?
10	MR. FLEISCHMAN: Train vertical fan coil units
11	running.
12	MR. LUNDY: Thank you.
13	Q Is that what you understood when you answered?
14	A Yes.
15	
16	Q If the risers had not been factory installed,
	that is, the vertical fan coil units supplied by Train,
17	they could have been installed on the job site, could
18	they not?
19	A In a vertical fan coil unit, no, because they are
210	all encased in a sheet metal enclosure, very very tight.
21	It is as I say a new type unit.
22	They are about 14 by 14 inches so it is a very
23	compact area.
24	Q You would take off the cover, couldn't you?

You have to take the unit apart pretty much

24

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Yes.

They were probably prepared, I would say, six months before Mechanical Contractors submitted quotations

1	for the job.
2	Q And
8	A So probably the first quarter of '72; in that are:
4	Q Were they ever amended or changed? I am talking
5	about the specifications which are General Counsel's
6	Exhibit Number 3.
7	A Well, in the course of any job they can be amended
8	or changed, yes.
9	Well, these particular specifications, were they
10	changed or amended?
11	A I amsure they were.
12	Do you have the original specification with you?
13	A No, I do not. The entire specification, no, I do
14	not.
15	Q Well, I am referring to the vertical, or denoted
16	here as vertical air handling units.
17	A I believe that is the original specification.
18	HEARING OFFICER: Has there been any change in
19	this particular specification since it was originated?
20	THE WITNESS: Yes, there has been.
21	HEARING OFFICER: In what respect?
22	THE WITNESS: They changed some technical aspects
23	of the specification
24	HEARING OFFICER: Well, in what way?
25	THE WITNESS: Oh, type of insullation, that type

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of pipe. In other words --

HEARING OFFICER: Which particular paragraphs have been changed on this specification?

THE WITNESS: Item 2.9, all risers piping typ L copper. That was amended for the condensate drain because of the price of copper, the condensate drain was changed to plastic which is a technical end of this.

There was one other -- the insullation was changed from --

HEARING OFFICER: Item what?

THE WITNESS: That it is item 3.0, insullation.

The type of insullation was changed from one inch thick pastic foam, to half inch fiberglass.

I am sorry, half inch plastic foam was changed to half inch fiberglass.

HEARING OFFICER: Anything else?

THE WITNESS: No. sir, not that I can remember.

- Q Was there any change in paragraph 2.8?
- A Two point eight?

No, sir.

- I am referring particularly to the last sentence, install flexible connections between colls and risers.

 Is that the way the unit is going to be manufactured?
- A When you say flexible connection --
- I am not saying it, the specifications are saying

it.

A I am trying to explain it to you. A flexible connection could be a piece of flexible tube or it can be a trombone connection, expands and contracts to take up expansion.

In this particular case the Train Company has built a trombone type flexible connection so it is a flexible connection.

- Oh, then this sentence where it says install flexible connections, they are not asking you to install it, that is a factory installed flexible connection?

 A That is correct.
- And would this be the type of a connection in say, the horizontal units that you have installed in the past where the connection was installed by Local 638 men?
- A In the old horizontal type fan coil with the vertical pipes, more times than not there would not be a flexible connection in this horizontal branch; it would be in the vertical riser.
- C Have there ever been any in the horizontal branch?
- A Not that we have done because the run of pipe is not long enough where you would require it.
- Q Have the Train units been one hundred percent approved as yet?

× ...

1	A They were one hundred percent approved
2	in February or the beginning of March of '72.
3	Q Were they approved by the underwriters?
4	A They were approved by the engineer, the consulting
5	engineer, the architect and the owner. The underwriters,
6	usually there is an underwriter's label on the unit
7	HEARING OFFICER: Usually there is a what?
8	THE WITNESS: Underwriters lable if the electrical
9	part of that unit had been approved by the underwriters
10	Laboratories.
11	Q Have you any information that the underwriters
12	have approved the vertical Train unit?
13	A I was informed by the Train Company that they had
14	all necessary approvals, which means underwriters approval
15	New York City approval and so on.
16	Q You spoke to Mr. Donnelly, I believe it was Decem-
17	ber 28th, 1972. Are you certain he mentioned Modular
18	Energy or Vertipak?
19	A He mentioned Vertipak.
20	Q Did you take any notes of that meeting?
21	A Yes, sir, I did.
22	Q Do you have them here?
23	A Mr. Blyer might have them. I do not.
24	MR. BLYER: I believe I do.
25	HEARING OFFICER: Before we give them to Mr.

.	Q Did you ever speak to the union prior to the time
1	7 - 7 - 7 - 7 - 7 - 7 - 7 - 7 - 7 - 7 -
2	that you let the contract to Train for these vertical
3	coil units, regarding the factory installation of the
4	branches?
5	A No, I do not.
6	Q How many firms actually bid on the job?
7	A I would say probably six to eight firms.
8	Q What was the bid which Train put in in terms of
9	.dollars?
10	A It was over a million dollars.
11	Q After December of 1972, did you ever discuss with
12	Mr. Chait or anyone else from Modular the bid price?
13	A I discussed you mean for the vertical fan coil
4	units?
15	Q Yes.
16	A The people I was negotiationg with, of course.
17	I say after you awarded the bid, there was an oral
18	bid
19	A I don't think so.
20	Q Did you ever discuss with Mr. Chait after you
21	had given the contract to Train, that is in December,
22	1972, well, maybe he could do better than the original
3	bid that he had submitted to you?
4	MR. BLYER: Your Honor, I object to this The
25	witness answered twice already that he had no conversations

1	with anyone after December '72, regarding Price.
2	HEARING OFFICER: Overruled.
3	A I was going to say on December 13th, I discussed
4	it with Mr. Chait.
5	Q No, after.
6	A No.
7	Q Never did?
8	A No.
9	Q Do you know whether Mr. Barbarnel, the constructi
lo	engineer on the North Shore Towers job, Mr. Salkowitz an
11	Mr. H-e-i-m-b-e-r-g-e-r, who were the architects on the
2	job, were aware of the Local 638's agreement?
3	A I am not sure that they were or were not.
4	Q Did you ever discuss with them?
5	A Well, since the owner already had units installed
6	on his previous job, I see no reason to think they
7	wouldn't be installed on this job.
8	HEARING OFFICER: Do you have much more cross-
9	examination?
0	MR. FLEECHMAN: It might be another 15 minutes or
1	so. If you want, we could recess.
2	HEARING OFFICER: I would like to finish with this
3	witness. I want to find out how much more you have. I
۱.	wish you would confine it to the direct examination.
5	Q By the way, if during the operation of these

units malfunctioning occurs, there are leaks, does the whole unit have to be shipped back to Train or can it be, you know, the cover taken off and the parts reached where there is trouble and repaired that way?

A The return air grill on the front end is removable where you can remove the fan or the control, the electrical controls.

Generally with these units that is where the problems are. Maybe a fan burns out or something like that

What happens if there is a leak in the riser, what do you do? Send the whole unit back?

A If there is a leak, well, units number one, are tested so it is very unlikely.

Q So therefore when you buy a car and you test it, you never have to send them back?

HEARING OFFICER: I prefer to let the witness answer the question before you interrupt.

MR. FLEISCHMAN: But he is making a lot of irrelevant statements. I know we buy cars and I know they are recalled and they are tested and I presume every manufacturer tests his product.

A There is a joint between the units. In other words, no, in the unit where we make field connections there is a possibility of a leak which, of course, is

1 accessable. It is not in the unit, it is between the 2 two units. 3 What about a leak in the unit itself where the riser goes down, you know, right into the guts of the 5 machine? Well, then, that is a serious problem and they 7 have to get to that particular leak wherever it might 8 be. 9 HEARING OFFICER: He hasn't installed them yet, 10 how would he know about that? 11 MR. FLEISCHMAN: After they are installed. 12 HEARING OFFICER: How does he know about that if 13 they haven't installed and there haven't bee any leaks? 14 MR. FLEISCHMAN: If he is a mechanical contractor 15 and he is 15, 15 or 20 years in the construction business, 16 I think --17 HEARING OFFICER: You are asking him to speculate 18 what he is going to do when something happens that 19 hasn't happened yet. I find the question objectionable 20 and I sustain my objection to that question. 21 Now proceed.

Are there provisions made for the removal of covers?

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A I just mentioned the return air grill comes off which is fairly large, where you can get to the

1	parts of the unit where there might be trouble. As I					
2	mentioned, the fan, that is usually a motor burns out					
3	so that could be slipped out of the unit.					
•	Q You know of no other part that is readily					
5	accessible?					
6	A That is right, just what is behind this big return					
7	air grill.					
8	Q Referring to the connections, that is the copper					
9	tubing between the fan coil unit and the vertical risers,					
10	are those connections made by cutting and threading?					
11	A No, by sweating.					
12	Q Could I have this marked for identification,					
13	please?					
14	(Fan coil unit above-referred to					
15	marked Respondent's Ex. No. 1 for identification.)					
16	Q Now, on this particular vertical fan coil unit,					
17	are those connections cut and threaded?					
18	A No.					
19	Q And on horizontal fan coil units, are these					
20	connections of copper tubing cut and threaded?					
21	A No.					
22	Q Didn't you state in Respondent's Exhibit 1, didn't					
23	you say with regard to our collective bargaining agree-					
24	ment with Local 638, it is my understanding that rule					
00						

me, Section one and four of that agreement, it is the

position of the --

MR. BLYER: Portion.

Q Is a portion of the contract that 638 says is being violated by our intention to use vertical fan coil units.

The union's position is that the connections

(copper tubing) between the fan coil unit and the vertical risers must be cut and threaded (sweated) --

THE WINESS: Sweat.

Q On the job by hand by steam fitters.

Now sweating is different, is it not, from threading?

A Yes, it is.

And did the union make any distinction as to whether it is cut and threaded or cut and sweated?

A Well, if it is a branch is what they are talking about.

HEARING OFFICER: I didn't hear the witness if it is a branch. In other words, the branch piping it it's cut, swear or screwed.

- Q It wouldn't make any difference.
- A Wouldn't make any difference.

HEARING OFFICER: The union claims all that work regardless, is that what you are saying?

THE WITNESS: Correct.

- 11					
1	Q	And do you know of any distinction in the past			
2	between whether it is cut and threaded or cut and sweated?				
3		No			
4	Q	The steam fitters would do the work?			
5	. A .	Correct.			
6	Q	Now, gaing to the next meeting date, January 9th,			
7	1973,	did you meet with Mr. Donnelly at that time?			
8	A	No, sir.			
9	Q	You didn't meet with him at all then?			
10	A	No.			
11	Q	And the next time you met Mr. Donnelly was January			
12	30th?				
13	A	That is correct.			
14	Q	At that meeting, what was the purpose of the meetin			
15	again	7			
16	A	It was a get together between the business agents of			
17	Local	638 and the directors of the Mechanical Contractors			
18	Association.				
19	Q	And for what purpose?			
20	A	There was no agenda, just to discuss things.			
21	Q	It was held at the B.T.E.A.?			
22	A	Yes.			
23	Q	And what time?			
24	A	It was before noon.			
25	Q	Was luncheon served?			

II		
1	A	Yes.
2	Q	Did you meet with Mr. Donnelly, Mr. Daly, and Mr.
3	Tracey	as a group?
4	A	We were all in the same room.
5	Q	Was it around the table?
6	A	At first as there is a little bar set up where a man
7	can ha	ve a drink and then you sit down and have lunch and
8	usuall	y when you have a drink people chit chat back and
9	forth.	
10	Q	Was this the occasion that you spoke to Mr. Daly,
11	Mr. Do	onnelly and Mr. Tracey?
12	A	I spoke to Mr. Tracey and Mr. Donnelly at that
13	time.	
14	Q	Did Mr. Daly join the group later?
15	A	Mr. Daly, we all sat down and had lunch at which
16	time	there was some open discussion.
17	Q	Was Mr. Munier there?
18	A	Yes, he was.
19	Q	And was there any time at this luncheon where the
20	conve	rsation was directed solely to the North Towers job?
21	A	Not to the North Towers job, no.
22	Q	What did Mr. Tracey and Mr. Donnelly say to you about
23	the N	orth Towers job with respect to vertical coil fan
24	units	17
25	A	This was before the meeting when we were standing

1	around, they mentioned, I mentioned Train Company.					
2	Q What did you say? Did you just throw out the					
3	word Train Company?					
4	A No, I was asked about the vertical fan coil units					
5	for North Shore Towers.					
6	Q And what did you say?					
7	A And I told I mentioned that they were purchased					
8	from the Train Company.					
9	And Mr. Tracey at one point and then Mr. Donnelly					
10	at another point mentioned to me that perhaps the unit should					
11	be bought from M.E.C. in order to avoid labor trouble at					
12	the job site.					
13	Q There was no discussion at all as to factory installed					
14	risers or connections?					
15	A Not at that time.					
16	Q Did they assign any reason as to why they wanted the					
17	Vertipak units?					
18	A Not that I remember, no.					
19	Q Did you have any comments?					
20	A No. I purchased the units from the Train Company					
21	and there was nothing more to comment on.					
22	Q What did they say about the consequences of not us-					
23	ing Vertipak units?					
24	A At that time only that there would be labor prob-					
25	lems.					

1 Did you ask them what kind of labor problems? 4 2 No. 3 At the present time aren't you the subject of charges before the Trade Board, that is, the board set up by 5 the Mechanical Contractors Association and the union with 6 respect to the use of factory installed risers and connec-7 tions? 8 MR. BLYER: I object to that, Your Honor. HEARING OFFICER: Sustained. 10 Is that the phrase they used, labor trouble? Q 11 That is correct. 12 0 Would you consider charges brought against you which 13 might lead to abitration as labor trouble? 14 A No. 15 Q You wouldn't? 16 No. 17 Did you ask these gentlemen just what labor trouble 2 18 is? 19 HEARING OFFICER: He has already answered that 20 question. He said he didn't ask. Let's proceed now. 21 Have you ever been the subject of a proceeding 22 before the Trade Board on charges or complaint brought by 23 Local 638? 24 MR. LUNDY: Objection, Your Honor. 25 HEARING OFFICER: Sustained.

1	Q As a matter of fact, weren't you before the arbi-				
2	trator most recently in connection with a problem on				
3	another job.				
4	. MR. LUNDY: Your Honor, I believe that we				
5	objected to this line of questioning.				
6	HEARING OFFICER: Sustained.				
7	Q At this conference did Mr. Donnelly, Mr. Tracey or				
8	Mr. Daly tell you that there would be violence at the job				
9	site if you used the Train vertical coil units?				
10	A No.				
11	Q Did they or any of them tell you that there would				
12	be strike if you used such units?				
13	A No.				
14	Q Did any of them tell you that there would be a				
15	refusal to install these units if you brought them to the				
16	job site?				
17	A No.				
18	Q You said there are a number of manufacturers that				
19	you asked to bid on these, on this job, the furnishing o				
20	vertical fan coil units; am I correct?				
21	A Correct.				
22	HEARING OFFICER: Are we going to go over that				
23	again?				
24	MR. FLEISCHMAN: No, I am leading to a question.				
25	The bests unit that was described or prescribed b				

1	the specification was Atmospheric Control Industries,
2	Inc.; am I correct?
3	A Correct.
4	Q And that is the M.E.C. unit?
5	A That is right.
6	Q Now, have any of the units other than the Modular
7	unit ever been installed by 638 men in the jurisdiction of
8	the union which I believe you know covers the five bor-
9	oughs, Nassau and Suffolk Counties?
10	A Not to my knowledge.
11	Q Did you make any inquiry as to whether any such
12	units were ever installed?
13	A Just from my own general knowledge of the industry.
14	Q Do you know whether horizontal fan coil units manu-
15	factured outside of the city of New York have been in-
16	stalled?
17	A Yes.
18	Q They have?
19	A Yes.
20	Q So that you had no qay of knowing whether Local 638
21	would or would not install vertical fan coil units manufac
22	tured outside of the geographic jurisdiction of the union?
23	A As I mentioned before, in accordance with our trade
24	agreement since they were installed, I saw no reason why
25	these units should not be installed.

1 So basically, the quarrel here was that with Q 2 respect to installation --HEARING OFFICER: You are asking the witness for a 3 conclusion. I am going to call a halt to this cross-5 examination. This witness was on the stand on direct examina-7 tion for about a half hour. You have been cross-examining 8 him for about an hour and a half or more. 9 I think you had adequate opportunity to cross-10 examine. If you have got any further questions other 11 than asking him for his conclusion as to what the dispute 12 is about. I would like to hear them. 13 I don't want his conclusion as to what the dispute 14 is about. That is what I am here for, to decide what the dispute is about and whether it was lawful or unlawful. 16 Who is Ronnell? 2 17 He is a contractor. 18 Is he under agreement with Local 638? Q 19 I would assume so. 20 Did you obtain this job, that is, the North Tower Q 21 job on competitive bidding? 22 That is correct. A 23 How many bidders did you bid against and what were Q 24 their names?

HEARING OFFICER: Objection sustained. It is

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MR. BLYER: I just have one other item.

Mr. Corsini, on the 28th of December of 1972, and on the 30th of January, 1973, when I think it was Mr. Donnelly said to you, usedphrase labor trouble or serious labor problems what did you take that to mean?

MR. FLEISCHMAN: I object.

HEARING OFFICER: Sustained.

MR. BLYER: I have no further questions, Your Honor.

RECROSS-EXAMINATION

(By Mr. Lundy) Just a couple of questions, Your Ronor, I would like the witness to refer to General Counsel's Exhibit Number 3.

Inviting your attention to Section 2.8 of that specification, Mr. Corsini, on cross-examination you were asked if there were any changes in the specifications for the vertical air handling units.

And you replied.

I ask you now were there any changes in Section 2.8?

MR. FLEISCHMAN: I believe he testified to that. He said there weren't any.

A No.

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There were no changes in Section 2.8?

A No.

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My next question relates to your testimony on cross-examination with respect to the meeting on January 30th.

I believe you were asked on cross-examination whether there was any conversation at the meeting directed solely to the North Shore Towers job and your answer was no.

I ask you now was there any conversation at the January 30th meeting directed to the use or installation in New York City of vertical air handlings units manufactured outside of New York City?

Yes, there was.

Would you please relate for the record what that discussion was?

MR. FLEISCHMAN: I object to that.

HEARING OFFICER: Object on what ground?

MR. FLEISCHMAN: Discussing the installation of these units outside of New York City, it is outside the geographic jurisdiction of the union.

HEARING OFFICER: That is not the question that Counsel is asking. There was discussion of installation in New York City of units manufactured outside of New York City.

MR. FLEISCHMAN: Then I withdraw my objection. Would you state for the record what statements were made and by whom?

Mr. William Daly mentioned at the meeting that units manufactured by M.E.C. were being shipped out of the jurisdiction of 638 and being installed, and that units manufactured outside, but units manufactured outside the jurisdiction of 638 would not be installed in New York City.

HEARING OFFICER: We have that on direct examination. Why do we have to have a repetition on redirect? MR. LUNDY: I wasn't clear that it was on direct, Your Honor.

HEARING OFFICER: I heard that testimony. I specifically asked it be repeated if Counsel will recall.

> MR. LUNDY: Thank you, I have nothing further. HEARING OFFICER: Any recross, Mr. Fleischman? MR. FLEISCHMAN: None.

HEARING OFFICER: You may step down. Thank you.

Before we recess for lunch, there is an attorney here who says that his client has been subpoensed, and he wants to make a motion with respect -- I understand subpoenaed by the General Counsel and he wants to make a motion for the release of his client from the subpoena.

Would you step forward, please, and state your name for the record.

A VOICE: R. Martin Oliveras of Cunningham & K-e-m-i-n-g, 0-1-i-v-e-r-a-s.



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AFTERNOON SESSION

HEARING OFFICER: The hearing will be in order. Call your next witness.

MR. BLYER: Mr. Munier.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Whereupon,

EMILE H. MUNIER,

a witness, called by and on behalf of the General Counsel, having been duly sworn, testified as follows:

DIRECT EXAMINATION

HEARING OFFICER: Be seated, please. What is your name?

THE WITNESS: Emile, E-m-i-l-e H. M-u-n-i-e-r.

HEARING OFFICER: Your home address?

THE WITNESS: Is 41 Pleasantville Road, Briarcliff
Manor, New York.

Q (By.Mr. Blyer) Mr. Munier --

HEARING OFFICER: Before we proceed, do you want to make the applications now or have you forgotten it?

MR. BLYER: Yes. .

HEARING OFFICER: Proceed.

Q Do you have a position on the Mechanical Contractors
Association of New York?

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I'm on the boards and the current President. 1 Were you present at a meeting on January 30th, '73, 0 at the Euilding Trades Employers Association office at 3 711 Third Avenue? I was. 5 Can you tell us who else was there? Well mostly the board of directors of our association 7 and the business agents of Local 638. Q Was Mr. Corsini there? 10 Mr. Corsini was there. 11 Do you recall the particular business agents from 688 Q 12 that were there? 13 I'm sure Mr. Daly, William Daly, and also George 14 Daly, and Mr. Donnelly and Mr. Tracey and --15 HEARING OFFICER: Keep your voice up. 16 Mr. Donnelly and Mr. Tracey and Mr. Good, Mr. Leap. 17 And I don't know, there may have been one or two missing, 18 but there are 11 of them and I think most of them were 19 there. 20 Was there a discussion at that meeting relating to Q 21 vertical fan coil units? 22 There was. 23 Q Could you please tell us what was said? 24 HEARING OFFICER: And by whom? 25 The question was initiated by our side, if you will

assembled.

the association representatives, in the context that this was a meeting where we were discussing our differences and problems as an industry, and the question of vertical fan coil units was posed in the context that cutting of the branches was still required to be performed by hand on the job, in 1973, and vertical fan coil units were being installed on the job on 38th street.

- A Well, I can't put an exact name to who said what.

 It was a general conversation on the subject, and the conversation from our point of view was we felt this was rather backward, that we still had to cut and thread paper branches or sweat on the job while these vertical fam coil units were going in where they were completely shop
- Q Do you recall anything that was said in specific by any Local 638 business agents?
- A Again I can't put an exact name on it, but one of the business agents answered that the vertical fan coil units that we were referring to had U. A. manufacturers label and that they were -- had to be accepted and installed.

MR. FLEISCHMAN: I ask that that be stricken. No identification of the individual who said it.

HEARING OFFICER: Motion denied. There was

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identification. I presume the witness is familiar with whom the board of directors are and whom the business agents are.

THE WITNESS: I am.

HEARING OFFICER: You know the difference between them?

THE WITNESS: Yes.

HEARING OFFICER: That was a statement by an unidentified business agent?

THE WITNESS: Yes.

HEARING OFFICER: You don't recall the name of the person who said it?

THE WITNESS: I don't, because there were two or three from our side who were making comments on the subject and there were at least three or four from their side who who were answering and making comments.

HEARING OFFICER: Proceed.

Q What distinction, if any, did the business agents of 638 draw between vertical fan coil units with a label and ones without one?

A We asked the question of what was the U. A. manufacturers label because it was a new label to us as an association and to us as contractors.

My recollection is that the answer that came forth agents was that there was a

U. A. manufacturer's label that covered this article, and that there were two people, two companies that had this label at that time, and that those units would be acceptable.

HEARING OFFICER: Were the names of the two companies mentioned?

THE WITNESS: Well, the Vertipak or M. E. C. was one of them which was the local company, and there was a company down in Maryland which we assumed to be the Whalen Company.

HEARING OFFICER: What?

THE WITNESS: W-h-a-1-e-n Company.

HEARING OFFICER: How do you spell 1t?

THE WITNESS: W-h-a-1-e-n.

Q Located where?

A I believe down in Maryland.

When you use the word acceptable, what do you mean?

A They would be acceptable for installation in Local 638 jurisdiction.

Q And do you know the significance of the U. A. label?

A Of this particular label I don't know the significance. There are many different kinds of U. A. labels, and and we have had experience over the years with some of them, but this is apparently a new label issued by the U. A. We have never seen what that agreement is.

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HEARING OFFICER: Issued by the U. A., meaning whom?

THE WITNESS: United Association, which is the parent national organization of Local 638.

HEARING OFFICER: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States, AFL-CIO?

THE WITNESS: Yes.

- Q Was there also a discussion in the conversation about Cleveland, Ohio?
- A There was a reference made that part of the reason this was advantageous to Local 638 was that units that were being made by M. E. W. Vertipak Units, were being shipped to a job in Cleveland.
- Q Was there any discussion over whether vertical fan coil units manufactured outside of New York or outside of the jurisdiction of 638 could be shipped and installed in New York buildings?
- A There was a question raised by one of our association representatives and the answer that came back was that they were not acceptable on Local 638 territory.
- Q Are you familiar with any builders within the jurisdiction of Local 638 which now have installed in them vertical fan coil units?
- A The only one I am aware of is the Ronnel job on

1	58th street.
2	Q Did you learn of any work stoppages at that job?
3	A No, sir.
4	Q Do you know who the maker of vertical fan coil
5	units for the Ronnel job was?
6	A Vertipak Units or M. E. C.
7	Q Are you here voluntarily?
8	A I was subpoensed.
9	MR. BLYER: I have no further questions, Your
10	, Honor.
11	HEARING OFFICER: You may cross-examine. Mr.
12	Lundy, do you have any questions?
13	MR. LUNDY: No questions, Your Honor.
14	CROSS-EXAMINATION
15	Q (By Mr. Fleischman) At this January 30th meeting
16	was it?
17	A Yes.
18	Q Was there any agenda prepared?
19	A There was an agenda prepared by Mr. Hopkins of our
20	association that I was familiar with.
21	Q What was the agenda?
22	A The agenda covered a whole series of items of dis-
23	cussion relative to problems that we felt were then exist
24	ing in the industry.
25	the shift a smithten normal?

A Yes, sir.

- Q Did it have an item on it, Vertipak Unit or vertical fan coil unit?
- A It had a reference to the vertical fan coil unit.
- Q And when did this discussion take place, that is, before lunch, after lunch, during lunch?
- A Well, the meeting started I believe at 11:00 o'clock and we broke for lunch somewheres after 12:30 or thereabouts, and I can't say whether this particular item was before or during because we continued on the conversation during lunch.

I think the meeting broke up somewheres like 2:00 o'clock or 2:30.

- Q You testified that M. E. C. was the only Local 638 employer in the area which manufactured a vertical fan coil unit.
- A To my knowledge, yes.
- Q Isn't it true that all men who work on piping on these units are steamfitters and receive the "A" wage?
- A I can't answer. I don't know what M. E. C. does.
- Q Does your contract provide for a different scale of wages for steamfitters or is there only one rate?
- A Well, there is an "A" rate and there is in our agreement with --
- Q In your agreement?

1	A	In our agreement with 638 there is an "A" rate
2	and t	here are apprentices and trainees talked about and
3	they !	have different rates.
4	Q	But a steamifiter
5	A	We also have "A"s and with 638 a "B" agreement.
6	Q	But that is with another branch of the trade.
7	A	It's all with Local 638.
8	Q	But the construction branch only provides for one
9	rate	
0	A	That's right.
1	Q	For a steamfitter, correct?
2	A	Other than the apprentices and so forth.
3	Q	Right. But a journeyman steamfitter, when it
4	speci	fies steamfitter, only specification of a journeyman
5	steam	fitter and there is only one rate applicable.
6	A	Right.
17		HEARING OFFICER: Your talking about a construction
18	contr	act. Are you assuming there are two different types
19	of co	ntracts Mr. Fleischman?
20		MR. FLEISCHMAN: Construction contract is the
21	contr	act which would apply to this particular contractor.
22		HEARING OFFICER: I don't know what you mean by
23	this	particular contractor.
4		MR. FLEISCHMAN: Mandell and Corsini.

* * *

HEARING OFFICER: You are talking about installation

1	A I hold a position of a field superintendant.
2	Q And briefly could you tell us your duties?
3	A My duties as a field superintendant is to help in
4	the hiring of men and the direction of all the progress
5	of the work on the job with my foremen.
6	Q What location or locations do you work?
7	A Well, I have different projects in different parts
8	of the boroughs of New York and I am located at North
9	Shore Thurs in Glen Caks, too.
10	Q How frequently are you at the Glen Oaks project,
11	let's say, within one week?
12	A On an average of 20 hours a week.
13	Q Are you a member of any labor organization?
14	A Yes, I am a member of Local 638 Enterprise Associa-
15	tion.
16	Q Are you here
17	HEARING OFFICER: Keep your voice up. You drop
18	your voice at the ends of each sentence and I lose the
19	last few words.
20	THE WITNESS: I'm a member of Local 638, the Enter-
21	prise Association.
22	Q Are you here voluntarily?
23	A No, I was subpoensed.
24	Q Do you recall a conversation at the Glen Oaks job
25	site on or about January 9th, 1973 with Local 638 business
CONTROL WILLIAM	

agent Mr. John Donnelly?

- A Yes, I do.
- Q Could you please tell us who else was present?
- A Present at the time of around that date were Mr.

 Ray, which is my general foreman, myself, and Mr. Donald

 Hackett, who was the shop steward that particular time

 on the job.
- Q Who were at that time Mr. Ray and Mr. Hackett employed by?
- A Mandell and Corsini.
- Q Would you please tell us what was said and who said it on that occasion?
- A Well, in connection with this particular problem, the vertical fan coil units, Mr. Ray we were in the discussion with Mr. Donnelly and Mr. Ray had asked Mr. Donnelly what was going to possibly happen with these particular units on this job.

And we were concerned and I was more concerned -HEARING OFFICER: Never mind you were concerned,
you were asked to tell us the conversation. Tell us the
conversation and not what you were concerned about.

- Q Who responded to Mr. Ray's statement, if anyone?
- A Mr. Donnelly had said to Mr. Ray that the units -the particular type unit that was going to be used on
 the job would be brought in on the particular job and

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we would be able to unload them and Mr. Donnelly had said to Mr. Ray that he would like to look at them because there was -- seems to be a problem of a violation of Rule Nine of our trade agreement.

Q Well, what was then said?

A Mr. Ray had asked Mr. Donnelly what should we do when these units come and as just stated, Mr. Donnelly had told us to bring men on the job and unload them at the particular areas where they were going to be unloaded and Mr. Donnelly would come out on the job and look at the units to see if they were a violation of our trade agreement.

Q Now, normally when such an item like a vertical fan coil unit arrives at a job site what would be the procedure?

MR. FLEISCHMAN: Object.

HEARING OFFICER: What ground?

MR. FLEISHMAN: Well, first of all, there was testimony that there was no normality about it. This is the first time it ever happened so you start off with a premise that this is based on past practice and --

MEARING OFFICER: You made a good point. You don't have to justify it any further. Objection sustained.

Q Mr. Schemback, did Mr. Donnelly's instructions veer at all from what was normal practice when items such as vertical fan coil units are received at a job site?

MR. FLEISCHMAN: Same objection.

 HEARING OFFICER: Same ruling.

Mr. Schembeck, what is the practice generally of projects you've familiar with regarding when items such as -- any type of item comes on a job site, what do you do with it?

A Well, in receiving items on a job site, we try initially to do is try bring it into the locality or location on that particular project or site, unload it and bring it into position to install.

Q Did Mr. Donnelly's instructions to you in any way vary that normal practice?

MR. FLEISCHMAN: I object. This asks for a conclusion.

HEARING OFFICER: Sustained.

Q What did you do with these particular units when they came to the job site? I withdraw that.

What did Mr. Donnelly tell you to do with these particular units when they came to the job site?

A To bring them in on to the job site, unload them, and leave them at this point until he gave us the decision on the particular problem.

HEARING OFFICER: You mean he said not to install them until he looked at them, is that what you are telling us?

HEARING OFFICER: Overruled.

Is that what you are telling us?

THE WITNESS: No, he didn't say that to me.

HEARING OFFICER: What did he say specifically, if

THE WITNESS: He said specifically to bring them in on the job site, unload them and give him a call so he can come out and see the particular unit himself.

HEARING OFFICER: When you get pipe on the job, do you have to wait until Mr. Donnelly comes out and looks at the pipe before you install it?

THE WITNESS: No.

HEARING OFFICER: When you get other units on the job, not talking about vertical fan coils, do you have to wait for Mr. Donnelly to look at them before you install them?

THE WITNESS: No, sir.

- In this respect that you were being told that Mr.

 Donnelly was to look at them before you installed them,

 wasn't that a varience from your usual procedure with

 respect to the receipt of materials?
- A Yes, there is a difference.

HEARING OFFICER: Proceed.

Q Have you ever been on a job site where horizontal fan coil units were delivered for installation?

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A Yes, sir.

Will you tell us the procedure with regard to horizontal fan coil units when they would be delivered to the job site? What would happen to them?

The usual procedure on all jobs is that we bring the unit in or the trucker brings the units in. They are unloaded and they usually are distributed to the particular floors that they are assigned for, and the installation will proceed right immediately behind this operation.

Did Mr. Donnelly's instructions in any way change that normal procedure?

MR. FLEISCHMAN: I object.

HEARING OFFICER: Sustained.

How in any way if at all, did Mr. Donnelly's instructions change that procedure?

HEARING OFFICER: You are asking the witness for a conclusion.

MR. BLYER: I am asking him to describe how -HEARING OFFICER: You are asking him to make a
conclusion that this was different. That conclusion is
based on what the facts were before and with respect to
what it is.

Did you have to wait for an instruction to install the vertical fan coil units?

MR. FLEISCHMAN: They haven't been delivered.

HEARING OFFICER: The horizontal units? The horizontal fan coil units, did you have to wait for instructions from Mr. Donnelly before you installed those?

HEARING OFFICER: Proceed.

THE WITNESS: No.

Q Did you have any further conversations with Mr. Donnelly about this issue, vertical fan coil units?

A No, only to the -- well, actually the only conversation between Mr. Donnelly and I was that I said I would like to see this particular problem solved before the units arrived at the job.

MR. BLYER: I have no further questions, Your Honor.

HEARING OFFICER: Cross-examination.

MR. LUNDY: Your Honor, I have a question.

CROSS-EXAMINATION

Q (By Mr. Lundy) There has been a fair amount of by-lay about this conversation and I am not sure the record is perfectly clear on one point.

Mr. Schembeck, after you had your conversation with Mr. Donnelly did you have an understanding as to whether you would be free to install those units?

MR. FLEISCHMAN: Objection.

HEARING OFFICER: Sustained.

MR. LUNDY: May I understand your ruling, Your

7.

Honor? Is it your ruling --

HEARING OFFICER: My ruling is that his understanding is irrelevant to the issues. The conversation is what is relevant, not his understanding.

MR. FLEISCHMAN: Pardon me, Your Honor, could you kindly --

MR. LUNDY: I would like to request at this time that the reporter read back aloud the exchanges that have taken place with respect to Mr. Donnelly's statements.

HEARING OFFICER: No, I don't have any intention of having the reporter read back aloud the testimony that has just been put into the record.

You should remember it or have notes. I remember it very vividly and don't have to have it read back. You are asking the witness to tell what his understanding of what Mr. Donnelly said meant to him.

And I won't let the witness testify to that. I have the conversation already as to what Mr. Donnelly said, period.

MR. LUNDY: I have no further questions.

HEARING OFFICER: Any cross?

CROSS-EXAMINATION

Q (By Mr. Fleischman) Mr. Schembeck, you have been a field superintendent for a number of years. Have occasions arisen where a steward has brought to your attention

what	he considered a grievance?
A	Tes.
Q	And in such instances, was one of the temporary
solu	tions arrived at, well, let's hold everything in
stat	us quo and bring down the business agent?
A	In some particular times, yes.
Q	And have such disputes ever related to certain
item	s which were delivered to the job and a question
aros	e as to whether it should be installed or not?
A	Yes, sir.
Q	And was one of the solutions reached on a temporary
besi	s, let's get the business agent in and discuss it?
A	Yes, sir.
	MR. FLEISCHMAN: No further questions.
	REDIRECT EXAMINATION
Q	(By Mr. Blyer) Mr. Schembeck, were you consulted
gene	erally when stewards would have such grievances and the
busi	iness agent would come down?
A	At particular times, yes.
	HEARING OFFICER: Anything else?
	MR. BLYER: One second, Your Honor.
Q	On this day, the ninth of January, the conversation
you	testified about, were you speaking to Mr. Donnelly that
day	in your capacity as a member of 638 or as a field
sup	erintendent for Mandell and Corsini?
	* * *

but I practice law differently than you do. 1 MR. BLYER: Your Honor, if they don't have the con-2 tract we could ask Mr. Gerald Chait to look at the contract 3 in evidence and see if in fact it is the same contract that he signed. 5 HEARING OFFICER: Do you want to call him as a witness? MR. BLYER: I have no objection to doing that. 7 HEARING OFFICER: You do whatever you like. I want 8 the contract in evidence. 9 MR. BLYER: Your Honor, at this time I would like to 10 call Mr. Gerald Chait. 11 HEARING OFFICER: You withdraw the statement that you 12 13 referred to? MR. BLYER: Yes, Your Honor. 14 HEARING OFFICER: Step up, please. 15 16 Do you solemnly swear to tell the truth, the whole 17 truth and nothing but the truth? 18 THE WITNESS: I do. 19 Whereupon, 20 GERALD CHAIT, 21 a witness, called by and on behalf of the General Counsel, having been duly sworn testified as follows: 22 DIRECT EXAMINATION

> HEARING OFFICER: What is your name? THE WITNESS: Gerald Chait. C-h-a-i-t.

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HEARING OFFICER: Where do you live Mr. Chait?
THE WITNESS: 31 R-c-y Street, Elmont, New York,
11003.

HEARING OFFICER: Proceed.

- Q (By Mr. Blyer) Mr. Chait, what is your position with Modular Energy Corporation?
- A General Manager.
- Q Do you presently have a contract with Local 638, Enterprise Association?
- A At present, no. We have returned our contract.

 HEARING OFFICER: You have what?

THE WITNESS: We have returned our contract and cancelled it.

HEARING OFFICER: In the period of January and February of this year --

THE WITNESS: There was a contract in force.

- Q When was the contract entered into?
- A The interim agreement was signed July 1, 1972.

 HEARING OFFICER: When was the expiration date?

 THE WITNESS: It was a three year contract, I believe.

HEARING OFFICER: Three years?
THE WITNESS: Three years.

HEARING OFFICER: How do you return a three year contract at the end of one year?

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1	THE WITNESS: Modular Energy is liquidating.
2	Q When did you return that contract, please?
3	A It was returned, I would say, one or two months
4	ago by a Mr. Nelson Stewart, S-t-e-w-a-r-t.
5	HEARING OFFICER: By returned you mean it was
6	physically sent back?
7	THE WITNESS: Yes.
8	HEARING OFFICER: Has the union agreed to the
9	termination of the contract before its expiration date?
10	THE WITNESS: I don't know, I was not involved with
11	that negotiation. The company is no longer functioning.
12	HEARING OFFICER: It is out of business completely?
13	THE WITNESS: Yes.
4	HEARING OFFICER: It is not doing anything at all,
15	it has no employees?
16	THE WITNESS: Yes, we do. We have seven employees
17	who are basically inventory.
18	HEARING OFFICER: Members of Local 638?
19	THE WITNESS: No.
20	HEARING OFFICER: You have no members of Local 638?
21	THE WITNESS: We have no hourly employees.
22	HEARING OFFICER: Wait until the question is finished
23	before you answer it. You have no members of Local 638
24	working for you?
25	THE WITNESS: No.

HEARING OFFICER: All right. Now then, look at 1 this contract that has been marked in evidence as General 2 3 Counsel's Exhibit Number Two, I believe. And tell me if this is the same contraxt that was the one that was in force from July 1, 1972, until you 5 sent it back. 7 THE WITNESS: At this time I cannot. This particular 8 contract was held by an officer of the Corporation. 9 HEARING OFFICER: All right. You don't know? 10 THE WITNESS: No. 11 HEARING OFFICER: All right, you may step down. 12 Thank you. 13 MR. LUNDY: Your Honor, I would like to ask him 14 some questions if I may. 15 HEARING OFFICER: All right, ask him. 16 CROSS-EXAMINATION 17 (By Mr. Lundy) Mr. Chait, you said you were the Q 18 General Sales Manager. During what period of time --19 A General Manager. 20 During what period of time? Q 21 From the inception of the company, January 1, 1972, 22 through the present time. 23 Q And what was the scope of your responsibilities as 24 General Manager? 25 I was General Administrator of the Corporation.

ran the corporation. 2 Q Did you have responsibility for sales, manufactur-3 ing and the profitability of the company? That's right. 5 Have you been present in the room -- were you 0 6 present in the room this morning when Mr. Corsini was 7 testifying? 8 Yes. 9 Q You say your company began on January 1, 1972. 10 that a successor company to any other entity? 11 A No. 12 Q Your company manufactures a product known as 13 Versipak? 14 Right. A 15 Was that product made, to your knowledge, by any 16 other company prior to the time that you started to 17 manufacture it? 18 A unit similar to that, yes. A 19 Q By what company? 20 A Atmospheric Control Industries. 21 Q And does your company have any relationship to 22 Atmospheric Control Industries? 23 None whatsoever. 24 HEARING OFFICERS: No inter ckingdirectors? 25

THE WITNESS: No.

HEARING OFFICER: No similarity in officers, stock holders?

THE WITNESS: Mobody whatsoever.

I believe there was a reference on the record to a company known as Ronnell Systems. Do you have any relationship to that company?

A Relationship? One of the principles of Ronnellis a stock holder, an officer of Modular Energy.

HEARING OFFICER: I don't recall the reference to Ronnell. What was the reference about, Mr. Blyer?

MR. LUNDY: I don't recall the context. I think the subject was mentioned in the cross-examination, if I remember, by Mr. Fleishman.

HEARING OFFICER: In what respect?

MR. LUNDY: I don't recall.

MR. BLYER: Your Honor, I could be helpful on this subject if you like.

Ronnel came up in discussion with the building that was visited by Mr. Chait -- this was Ronnel as a mechanical contractor, a competitor with Mandell and Corsini.

Mr. Chait and Mr. Corsini, according to Mr. Corsini's testimony, visited the building on East 58th Street where Ronnell was the mechanical contractor putting in --

HEARING OFFICER: All right. Anything further?
MR. LUNDY: Yes, Your Honor.

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Q	(By Mr. Lundy) Did you attempt to s	ell the
vert	ical fan coil units to Mandell and Cors	ini?
A	Yes.	
Q	Have you sold vertical fan coil unit	s to any other
conti	ractor in the New York area?	
A	Yes.	
Q	To whom?	
A	Ronnell. And we have attempted to s	ell Hudick
Ross	Corporation. Also Shelley Systems, In	corporated.
Q	Have you made sails to anyone other	than Ronnell?
A	Both of those contractors. And we h	nave unfilled
order	rs which have not been manufactured whi	ich have been
cance	elled, yes.	
ą	Have any of your units been installed	ed in the New
York	area?	
A	Yes, in the Lincoln Towers job on 62	and Columbus
Aven	ue.	
Q	By which contractor?	
A ·	Ronnell Systems.	
Q	At any other locations?	
	HEARING OFFICER: You mean any other	location other
than	58th Street.	
	MR. LUNDY: He testified to 62nd Str	reet, Your Honor,
just	now.	

THE WITNESS: Correct.

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So you have a location now where your products were installed on 62nd Street and another one at 58th Street?

Right.

Any other locations where they have been installed? Q

In Jersey City.

In the New York area.

In the New York area, I believe they will be installed in the Maurice Hotel.

HEARING OFFICER: You mean they have not yet been installed?

THE WITNESS: As far as I know, no.

HEARING OFFICER: And these are the only two jobs that now have been installed?

THE WITNESS: Yes.

Do you know whether they were installed by members 0 of Local 638 at those jobs?

Those units which I know have been installed have been installed by Local 638, yes.

You indicated you had a responsibility for manufac-3 turing?

Yes.

Can you please state for the record what sort of Q manufacturing is done by or has been done by your company in making these products, these vertical fan coil units?

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A We manufacture the Vertipak Unit except for the basic material which we purchase outside, such as motors, blowers and coils.

We fabricate sheet metal, copper, wiring harnesses items like that and assemble.

Q Do you use members of Local 638 in that work?

A We have used members of Local 638 when we were functioning, yes.

Q When I say you I mean members of the "A" branch and "B".

A We had "B" in our shop too.

Q Do you have known union employees who were working in your shop?

A At that time only those employees which were on a thirty day trial before being asked to join the union.

Now, of the employees who were working in your shop in the manufacture, can you state for the record approximately what percentage of them were members of the "A" branch and what were members of the "B" branch?

HEARING OFFICER: What is the relevance?

MR. LUNDY: I think it bares upon the defence I think the union will make, that they are protecting the work of members of the "A" branch.

HEARING OFFICER: Objection sustained. Proceed.
Will you state for the record on an average basis



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HEARING OFFICER: You may cross-examine, Mr.

CONTINUED CROSS-EXAMINATION

Q (By Mr. Fleischman) Mr. Chait, how did you come to bid on the North Towers job?

A We were -- became aware of the job through the owners, Sigman, Somers, we had been requested to put out a price on that particular job by Mr. Larry Schleiker, who was vice-president with that organization and I believe the co-ordinator.

We obtained a list of bidders from him and he set up mechanical plans which a bid was prepared and sent to those contractors which requested, or the names made available to us at the time.

- Q And about when did you submit your bid?
- A That was in the fall of 1972 I believe it was.
- Q Subsequent to January 1, 1973, did you have occasion to meet with Mr. Corsini?

A We had a luncheon appointment with Mr. Corsini in mid-December. Myself, Mr. Harvey Silpon, president of the corporation, and Mr. Augie Corsini.

We had a luncheon date to discuss negotiation of the contract or a potential contract.

- Q And did you have the luncheon?
- A Yes, we did.

1 Q Were you present in the hearing room this morning? 2 Yes. 3 5 6 Yes. 7 8 Corsini? 9 A In January? 10 Yes, January or February. 11 Yes. 12 Q 13 14 15 16 number that he had on his sheet. 17 18 could do no better. 19 20 21 22 23 24 25

And did you hear Mr. Corsini testify that he had awarded the contract to Trayne, that is originally awarded it sometime before January 1, 1973?

Did you have occasion after that to meet with Mr.

And when and where and what was the occasion?

At the time of the negotiation in December, Mr. Corsini had notified us that our price was above what he had originally figured on the job or estimated it for the

We had told him that based upon our cost that we

He had given us a figure that he had on the books and asked us to meet it. We said that we could not.

However, he did stipulate that he did not particularly care to have any union problems or any particular problems with the owner, the engineer, etc., etc., with any other equipment that possibly might not meet specifications and to leave the matter open.

From that day we had lunch I pursued Mr. Corsini for approximately six weeks at which time we called him. He had stipulated to us that he did not get, give the order out.

At one time I had confronted him and asked him that -- did he give the order out to Trayne Corporation, because the rumors in the field which had gotten back to me said the order was awarded and he said no.

Q When was that?

A This was toward the end of January.

At that time I was preparing for the Ashrae Show in Chicago. About the day before I was supposed to go go Chicago I had called Mr. Corsini.

He said he had not given the order out. However, he would like to meet with me to go over our unit, how it was installed, etc., etc.

I had made an appointment with him for, I believe it was a Thursday. I do not know the date. I had met him in his office.

HEARING OFFICER: In response to what question is this dissertation taking? That is what I would like to know.

MR. FLEISCHMAN: Did he meet with Mr. Corsini?

HEARING OFFICER: You asked him did he meet afterward and we have been listening for the last ten minutes to

X X X

1 THE WITNESS: That was the third week in January. 2 I don't have the exact date. It was before the Ashrae 3 Show. HEARING OFFICER: At that time you were under the 5 impression that he had not given out the contract? 6 THE WITNESS: That is right. In fact, at that 7 meeting he said he didn't give out the contract. 8 HEARING OFFICER: Do you have any further questions, 9 Mr. Fleischman? 10 MR. FLEISCHMAN: No other questions. 11 HEARING OFFICER: Any re-direct? 12 REDIRECT EXAMINATION 13 (By Mr. Blyer) Mr. Chait, what is the status of Q 14 Atmospheric Control Industrues, Incorporated? 15 It is owned by the Franklin National Bank. A 16 I am sorry, I didn't ask you that. I asked you what 17 is the status of it? Is it an ongoing corporation? 18 No. 19 When did it stop doing business, if you know? Q 20 HEARING OFFICER: What is the relevance? 21 MR. BLYER: For clarification, Your Honor. 22 HEARING OFFICER: I don't want clarification. I 23 want to know what the relevance is. 24 MR. BLYER: I think it is relevant. The specific_ 25 ations state that the requirement of Mandell and Corsini

was to purchase and install a vertical coil unit made by 1 atmospheric Control Industries or an approved equal. 2 We have no testimony that there was any submission 3 of bids for --HEARING OFFICER: What does that have to do with the 5 issue before me as to whether or not the union stopped 6 7 the installation of Trayne units? MR. BLYER: I thought for clarification purposes 8 it would be important to know --10 HEARING OFFICER: I don't need any clarification. 11 MR. BLYER: All right. 12 MR. FLEISCHMAN: I have no further questions. 13 MR. LUNDY: No further questions, Your Honor. 14 HEARING OFFICER: You may step down. 15 (Witness excused.) 16 HEARING OFFICER: I still want to see the contract. 17 I also want to see the contract between Mandell and 18 Corsini and Trayne. 19 MR. BLYER: Off the record. 20 HEARING OFFICER: Off the record. 21 (Discussion off the record.) 22 MR. BLYER: Your Honor, I would like to offer the 23 following stipulation, that at all times material herein 24 Local 638 has had a collective bargaining agreement with

Modular Energy Corporation and with Ronnell Systems,

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Incorporated, covering steamfitters; and that at all times material herein, M.E.C.'s steamfitters have performed the fabrication or the manufacturing of vertical fan coil units

MR. FLEISCHMAN: And the piping in the manufacture?

MR. BLYER: Have vertical fan coil units.

MR. FLEISCHMAN: It is all the piping.

MR. BLYER: I will agree.

MR. FLEISCHMAN: And receive the "A" rate.

Furthermore, that the contracts which were entered into by and between Local 638 and Ronnell and Modular Energy Corporation as to terms and conditions were identical with those set forth in the contract between Local 638 and Mandell and Corsini, heretofore extered into the record as General Counsel's Exhibit Number Two.

MR. BLYER: That is fine with me, Your Honor. I will stipulate to that.

MR. LUNDY: Your Honor, may I note for the record that Mandell and Corsini does not stipulate.

HEARING OFFICER: All right. If you wish to enter it I will take the stipulation and if you wish to introduce proof indicating anything contrary to the stipulation before this hearing terminates, I will receive it.

MR. LUNDY: Thank you, Your Honor.

MR. BLYER: I would also like to offer the stipulation that at all times material herein Local 638 had no

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collective	bargaining	agreement	with	the	Trayne	Company.
	DI ETCOMAN	. 150 mf11		-1	ate.	

MR. LUNDY: I will be glad to join in that stipulation.

HEARING OFFICER: All right, we have got one unanimous stipulation.

Now, what about the contract with Trayne, between Mandell and Corsini and Trayne? I want that in the record.

MR. LUNDY: Your Honor, we do not have it in the hearing room today, but it can supplied and will be supplied. Shall I mail it directly to you, sir?

HEARING OFFICER: No, I would rather you bring it in before this hearing ends.

Now then, your office is on Third Avenue. It should not be any problem in getting it here. If necessary, we can get it here today and if not, we can get it here tomorrow, if we go on tomorrow.

General Counsel rests now?

(CONTINUED ON NEXT PAGE.)

124 1 Let's proceed. 2 MR. FLEISCHMAN: Mr. Tracey. 3 HEARING OFFICER: Off the record. (Discussion off the record.) 5 HEARING OFFICER: On the record. 6 Do you solemnly swear to tell the truth, the whole 7 truth and nothing but the truth? 8 THE WITNESS: I do. 9 HEARING OFFICER: What is your name, sir? 10 THE WITHESS: John Tracey. 11 HEARING OFFICER: Where do you .11ve, Mr. Tracey? 12 THE WITNESS: 2544 Murray Street, Flushing, New 13 York, 11354. 14 Whereupon, 15 JOHN TRACEY. 16 a witness, called by and on behalf of Enterprise Associa-17 tion, having been duly sworn, testified as follows: 18 DIRECT EXAMINATION 19 (By Mr. Fleischman) Mr. Tracey, what position Q do you hold in the union? 21 A Business agent at large. 22 Q And what are your duties? 23 Supervision over the business agents and so forth. 24

How many business agents are there?

Twelve.

25

1	Q	And how many years have you been business agent
2	at la	arge?
3	٨	Thirty years.
4	Q	Are you a steamfitter by trade?
5	A	Yes.
6	Q	What is the geographic jurisdiction of Local 638?
7	A	Greater New York and all of Nassau and Suffolk
8	Count	y.
9	Q	That is five.
10	Α -	Five boroughs.
11	Q	Five boroughs?
12	A	Yes.
13	Q	Are you the business agent at large only of the
14	const	truction branch?
15	Α	Metal trades, too.
16	Q	Metal trades, too?
17	A	Right.
18	~	But the particular contract, what is known as,
19	the c	contract with Mandell and Corsini?
20	A	Well, it is the "A" branch, 638.
21	Q	Those are construction men?
22	A	Yes.
23	Q	How many different rates are there for construction
24	steam	fitters?
25	A	Just one. One and a temporary. That is the
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1	mainte	nance contract.
2	Q	Now
3		HEARING OFFICER: Is that the rate which appears
4	in thi	s contract, General Counsel's Exhibit 2?
5		THE WITNESS: Right.
6	Q	Now, on January 30th, 1973 did you have an occastion
7	to mee	t with Mr. Corsini?
8	A	No, I didn't have any occasion to meet with him.
9	Q	But did you meet with him?
10	A	I met at a meeting he was at.
11	Q	Now, when and where was that meeting held?
12	A	Well, if he has reference to a meeting that I
13	think	it is, it was held in the Building Trades Employers
14	Associa	ation. 711 Third Avenue.
15	Q	Who was present?
16	Y	HEARING OFFICER: Keep your voice up, Mr. Tracey.
18	A	There was quite a few people present there. All
	of our	business agents and myself. All the officers of
19	our un	ion and the members or the board of directors of
20	the Med	chanical Contractors Association.
21	Q	Was Mr. Corsini there?
22	A	I assume he was.
23	Q	Mr. Munier?

Was there an agenda for that meeting?

25

Yes, I recall Mr. Munier.

A Yes. The meeting was called for some understandings that we wanted with our employers association relative to our funds.

We wanted an extra man on each fund. We had a building committee that was functioning and we wanted to get some agreement on purchasing buildings for our funds and things of that king.

HEARING OFFICER: You are talking about the pension funds and welfare?

THE WITNESS: Pension, welfare and so forth, right.

Q And when did the meeting commence, about what
time, if you can recall?

Well, I don't recall that particular meeting, to be truthful with you. I don't know whether that was a morning meeting and we usually adjourned for lunch and drinks and so forth.

Now, did you have any occasion to participate in a conversation with Mr. Corsini and others present, such as Mr. Daly, Mr. Donnelly, Mr. Munier, concerning these fan coil units?

I have absolutely no recollection of any discussion whatsoever with relation to fan coil units, none.

MR. FLEISCHMAN: I have no further questions.

1 CROSS-EXAMINATION 2 (By Mr. Blyer) Mr. Tracey, are you familiar with 2 3 the East 58th Street Building where 638 members were 4 employed by Ronnell? 5 Yes, I am. 6 Q What type of vertical fan coil units were placed 7 in that building? 8 A Vertical fan coil units. 9 Who manufactured them? Q 10 A I assume Modular Energy. 11 Q Were there any work stoppage at all at that East 12 58th Street building? 13 None that I know of 14 Is it aso true that 638 personnel installed the 15 Modular vertical fan coil units at the 62nd Street 16 building, 62nd and Columbus? 17 That I have no recollection on. I heard that 18 here today. 19 But you don't know? 20 I don't know anything about it. 21 HEARING OFFICER: Mr. Chait referred to the . 22 Lincoln Towers job. 23 THE WITNESS: I heard that testimony. 24 HEARING OFFICER: That is the first the heard about

1t?

being installed if they were manufactured outside of the

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1	geographic jurisdiction of the union?
	A No. We usually accept them
2	A No. we usually accept them
3	HEARING OFFICER: What?
4	THE WITNESS: We accept them and pipe them up.
5	MR. FLEISCHMAN: No further questions.
6	HEARING OFFICER: I have a couple of questions, Mr.
7	Tracey.
8	Mr. Tracey, does the M.E.C. Modular Energy Corpo-
9	ration, is that the name of it, do any installation work,
10	to your knowledge?
11	THE WITNESS: In that company, to the best of my
12	knowledge, no
13	HEARING OFFICER: Purely manufacture?
14	THE WITNESS: Purely a manufacturing company, al-
15	though under this agreement they could install the jobs.
16	HEARING OFFICER: I didn't ask you about the agree-
17	ment yet. I just asked you whether they were a manufac-
18	turing company
19	THE WITNESS: To the best of my knowledge that is
20	all they do.
21	HEARING OFFICER: This Rule 9 that was referred
22	to me by Mr. Pleischman, this permits the piping of units
23	of work to be done in the shop of the installer; isn't
24	that correct? That is what Rule 9 is all about?

THE WITNESS: Certain pipe.

HEARING OFFICER: Well, generally speaking, your contract requires work either to be done on the job site by the installer in his own shop?

THE WITNESS: Right.

HEARING OFFICER: So that this Rule 9 would not be applicable then to a manufacturer like Modular Energy Corporation; is that correct, since he doesn't do any installing on the job site?

THE WITNESS: It wouldn't be applicable, no, not in this particular situation.

HEARING OFFICER: Thank you very much.

(Witness excused.)

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: We will recess until tomorrow morning at ten a.m.

> (Whereupon, at five o'clock p.m., the hearing was adjourned as above-specified.)

- 11	134
1	PROCEEDINGS
2	JUDGE ROSS: On the record.
3	You may proceed.
4	MR. FLEISCHMAM: Mr. Donnelly.
5	JUDGE ROSS: Raise your righthand, sir.
6	Whereupon,
7	JOHN DONNELLY,
8	was called as a witness, and having been duly sworn, was
9	examined and testifeid as follows:
10	JUDGE ROSS: Be seated, please.
11	What is your name?
12	THE WITNESS: My name is John Donnelly,
13	D-O-N-N-E-L-L-Y .
14	JUDGE ROSS: Your home address?
15	THE WITNESS: 154-30 48th Avenue, Flushing.
16	JUDGE ROSS: Proceed, Mr. Fleischman.
17	DIRECT EXAMINATION
18	Q (By Mr. Fleischman) What position do you hold
19	with Enterprise Association?
20	A I'm a business agent for Local 638.
21	Q How long have you been a business agent?
22	A Eight Years.
23	ρ Prior to that did you work at the trade?
24	A I've been a steamfitter since 1939, helper and a
25	steamfitter since 1939.

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	Q And du	uring the period in question, that is	from
2	winter of 197	72 to the present time, where did you	function?
3	A I've i	been a business agent in the Borough of	•
4	Queens, the r	north section of the Borough of Queens	since
5	1967.		
6	Q And wo	ould that cover the area of North Shore	
7	Towers?		
8	l Yes, i	it does.	
9	Q All ri	ight.	
10	What a	are your duties as a business agent?	
1	A To vis	sit jobs, speak to the men, the foreman	, the
2	shop stewards	s to see if everything is all right, no	jur-
3	isdictional p	problems, things of that sort. Answer	com-
4	plaints more	or less from shop stewards or foremen,	
.5	fitters in ch	harge.	A
6	Q All ri	ight.	
7	Now, d	did you have a telephone conversation of	on/or
.8	about Decembe	er 28 with Mr. Corsini?	
9	A I had	a telephone conversation with Mr. Cors	ini
0	on/or about t	that date, I wouldn't be positive of.	
1	Q What d	did he say to you and what did you say	to
22	him?		
3	A I had	called Mr. Corsini up about a problem	that
4	was arising b	between the steamfitters and the rigger	s. I
25	had a complai	int from the shop steward that the rigo	era

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were going to come in and install equipment that should have been installed by steamfitters and I had said to Mr. Corsini, is there anything he could do to dtop this, and avoid any conflict between the steamfitter and the rigger.

- O In what way was Mr. Corsini involved?
- A Mr. Corsini was the heating contractor on the job.
- And who was incharge of letting the installation, as you said, I think it was boilers --
- A Boilers, plumbers, equipment that would go into a boiler room.
- Who was in charge of that or who let that contract?
- At the time I thought Mr. Corsini had it in his contract, but I did find out that the builder had bought the equipment and had given the assignment to the rigger.
- Q I see.
- A I found out that Mr. Corsini did not have that equipment in his contract.
- 2 So what did you discuss with Mr. Corsini over that at the -- that time in this telephone conversation?
- I had asked Mr. Corsini if he could intercede with the builder to see if the work couldn't be turned over to the people who it rightfully belonged to which I considered the steamfitters work.
- 0 What was the outcome of that matter?

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1	A Well, the rigger then proceeded to do the work,
2	and I got called out again and I spoke to Mr. Corsini
3	about it and I said to him before we have any labor pro-
4	blems or any blood shed between the steamfitter and the
5	rigger I'd like to get it straightened out.
6	Q Was it eventually straightened out?
7	A No. The rigger continued to do the work, about
8	85 percent of it anyhow.
9	Q And who did the other 15?
10	A. We did.
11	JUDGE ROSS: Why were you talking to Mr.
12	Corsini the second time after he told you that he had
13	nothing to do with the contract?
14	THE WITNESS: Well, I thought maybe that he
15	could speak to the builder and say, listen this
16	JUDGE ROSS: Why didn't you speak to the
17	builder?
18	THE WITNESS: I did speak to the builder.
19	Q (By Mr. Fleischman) Was there any strike?
20	A No.
21	0 Or stoppage on the job?
22	
23	and totalle of work proppings on the job.
24	
	at this hearing?

I --

1 I mean, were you present in the room? 0 2 Yesterday morning you're referring to? 3 Right. I came in a little late. I was here early, but 5 I had to leave and come back again. When did you hear of it - first hear of the term 0 7 modular or the term vertipak? 8 The first time I heard the term modular used or 9 vertipak used is sometime around May 1973. 10 Were you aware that there was a vertical fan coil 11 unit manufactured in New York City? 12 I had visited a shop over on Elm, maybe a year, 13 a year and a half ago, and I had seen the cubicle, the 14 machine was going to be built into, but I never seen the 15 full project itself, the finished product, I never seen 16 it. 17 Q Did you have occasion to meet with Mr. Schembeck 18 around January 9th, 1973? 19 I met with him. The exact date I wouldn't be sure. 20 On/or aaround that date. 21 Who was present? 22 Mr. Schembeck, he was the superintendent for 23 Corsini, the foreman for Corsini, by the name of Steven 24 Ray, and the shop steward had asked me to come out to the 25 job, his name is Donald Hackett.

139 And did you go out to the job? 1 0 2 I did. And what was the discussion? 3 They explained to me about this vertical fan coil unit that was going to be installed on the job. 5 JUDGE ROSS: Who is they? 6 THE WITNESS: The three of them. Well, the 7 shop steward and foreman were explaining to me about the 8 vertical fan coil unit and they asked me what to do about it because they knew it was going to be a violation, at 10 least I advised them it was going to be a violation of 11 12 our trade agreement. And what did you do or say? 13 I say if and when these machines come in you will 14 install them and put them in their respective places which 15 could have been on the floors where they belong, it could 16 have been in the garage, warehouse, whatever it might be, 17 when they come in, call me and I'll come out and take a 18 look at them and decide whether there is a violation or 19 20 not. Now, I want to bring you up to June 30, 1973 --21 January 30, 1973, the occasion of this gathering at the 22 B.T.E.A., you recall that meeting? 23 We had a meeting with the Mechanical Contractors

Association, and the officers of Local Union 638, at the

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	Puilding Trades Employees Association, 711 Third Avenue.
	Q Was there or did there come a time during this
	gathering when you entered into a conversation or anyone
•	else did with Mr. Corsini at which time you were present
5	and there was a discussion of the vertical fan coil units?
3	A Yes. During our lunch period, we were sitting
7	down having dinner, and Mr. Corsini had said off the
8	cuff, what objections does the members of Local or the
9	officers of Local Union 638 have about installing verti-
0	cal fan coil units, and my answer, we don't have any
1	objections to it, as long as it's done by and for members
2	of Local Union 638.
3	JUDGE ROSS: Unless what is done by and for?
4	THE WITNESS: Unless the connection, coil
5	connections and the risers cut and threaded or soldered
6	or welded by Local Union 638 men.
7	JUDGE ROSS: You're talking about by 638
18	men on the job or in the factory?
19	THE WITNESS: On the job or in the shop of
20	the direct employer.
21	Q (By Mr. Fleischman) Now,
22	JUDGE ROSS: Is that what you said to Mr.
23	Corsini?
24	THE WITNESS: No. What I said to Mr. Corsin

we have no objections as long as the work is being done

 by and for Local Union 638 men, steamfitters.

(By Mr. Fleischman) Now, these connections and these risers, are they threaded?

I haven't seen the machine, but I'll be almost positive they were soldered.

MR. LUNDY: To that, Your Honor, he hasn't seen it, how does he know.

MR. FLEISCHMAN: There was testimony yesterday.

JUDGE ROSS: It's irrelevant here anyway. I
don't know why the question was asked, There is apparently
no dispute whether it is sweated or threaded, it would
be work that normally the steamfitters would claim jurisdiction, so why go into the matter?

MR. FLEISCHMAN: The reason is that article, I mean Rule 10 covers welding or other forms and if it's sweated, it expressly says that it can be done in a shop other than the shop of the direct employer, to be done by a fabricator.

JUDGE ROSS: I'll sustain the objection

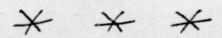
since the witness claims unfamiliarity with the equipment.

(By Mr. Fleischman) Have you invoked -- did you

have a labor problem with Mandell, Corsini recently?

To have a labor problem with Mr. Corsini of

Mandell, Corsini Corporation?



accordance with the grievance procedure in the agreement,
and as a result of the impasse the matter was referred
to a permanent Arbitrator, Arthur Stark, who held a
hearing on the same and that we are now the union is
now, the parties are now awaiting the determination, the
decision of the Arbitrator.

JUDGE ROSS: The offer of proof is rejected.

MR. FLEISCHMAN: All right.

I have no further questions.

JUDGE ROSS: Cross-examine.

CROSS-EXAMINATION

BY MR. BLYER:

- Mr. Donnelly, when did you first become -- when did you first become familiar with vertical fan coul units?
- A For this particular job?
- Q Any job.
 - I said I visited a shop, fabricating shop, a contractor by the name of Ronnell, and that was the first time.
 - Q When was that?
 - A Possibly a year and a half ago.

JUDGE ROSS: You said when you testified on direct examination you said May 1973.

Was that an error?

THE WITNESS: I said May 1973?

JUDGE ROSS: That's what you testified to.

That's what my notes say you testified to. I may be in error, but if you say it's a year and a half ago that would not be this May, it would be a year ago May.

MR. LUNDY: Your Honor, if I may be helpful JUDGE ROSS: I didn't ask you anything, sir,
and don't interrupt when I'm talking to the witness unless you have an objection to the question.

THE WITNESS: I said about a year and a half ago I vistied Ronnell shop.

JUDGE ROSS: What I'm trying to point out is that I think that you testified to May 1973 on direct examination and if it was a year and a half ago that would probably be an error and I'm trying to get the record straight as to when it was, was it May 1973 or May 1972?

THE WITNESS: I would say May 1972.

JUDGE ROSS: Thank you.

- (By Mr. Blyer) Does the date May 1973 have any significance with regard to vertical fan coil units?

 May 1973, not to my knowledge, no.
- MR. FLEISCHMAN: If I may, my recollection of the testimony was that he learned of modular and the term vertipak in May of this year and he visited Ronnell --

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1	I may be mistaken.
2	JUDGE ROSS: Maybe I'm in error. That's
3	what my notes say. May 1973 was when he first heard of
4	vertipak.
5	MR. FLEISCHMAN: Vertipak is not
6	JUDGE ROSS: I see.
7	MR. FLEISCHMAN: There's a distinction.
8	JUDGE ROSS: I stand corrected.
. 9	THE WITNESS: What I said I never heard of
10	the word vertipak or modular until May of 1973, but that
11	is not the question this gentleman asked me.
12	JUDGE ROSS: All right.
13	Proceed.
14	Q (By Mr. Blyer) You stated you had a conversation
15	with Mr. Corsini on January 30, '73?
16	A I had a conversation with Mr. Corsini. The date
17	eludes me. Somewhere around that neighborhood.
18	Q Is that the Building Trades Employees Association?
19	A We had a meeting around that time, yes.
20	And this conversation took place before the
21	meeting?
22	A No, this took place at a luncheon.
23	Q As the meeting was going on?

No. We had a meeting, we usually go in about

10:00 o'clock, 11:00 o'clock, and then we convene for

146 1 lunch maybe 12:30, 1:00 o'clock, and that's when the 2 conversation took place. 3 JUDGE ROSS: Who was present during that conversation? THE WITNESS: That direct conversation with 6 the whole group? JUDGE ROSS: At the time you had this con-8 versation with respect to when Mr. Corsini asked you 9 what objections you had to installing the fan coil units, 10 Trane fan coil units. 11 THE WITNESS: I would say possibly 15 of our 12 officers and possibly the same amount of officers from 13 the Mechanical Contractors Association. 14 JUDGE ROSS: Was Mr. Meunier at the time? 15 THE WITNESS: Mr. Meunier is usually there. 16 He's president of the Mechanical Contractors. I believe 17 he was there that day. 18 JUDGE ROSS: Proceed. 19 (By Mr. Blyer) Now, what did Mr. Corsini say to 20 you on that occasion? 21 He didn't direct any quastion to me at all. 22 just said what objections did 638 have, and the answer that 23 I had said to him was we have no objections to it, as 24 long as the work is being done by and for members of Local 25 Union 638.

1	JUDGE ROSS: Was that the first time you
2	spoke to Mr. Corsini about fan coil, vertical fan coil
3	unit?
4	THE WITNESS: To the best of my knowledge.
5	JUDGE ROSS: You had no prior conversation w
6	with him regarding the installation of fan coil units?
7	THE WITNESS: No, sir, I didn't.
8	Q (By Mr. Blyer) Did Mr. Corsini respond to what
9	you said?
10	A No. He didn't answer me in anyway.
11	a Isn't it a fact that he told you they bought them
12	from Trane?
13	A He never said a word to me about Trane.
14	Q Did you know about Trane at that time?
15	A Beg your pardon?
16	0 Did you know about Trane?
17	A Only to what the foreman and the superintendent
18	had told me.
19	0 What did they tell "ou?
20	A That they were informed that units from modular
21	units from Trane were going to be manufactured by the
22	Trane people.
23	Q. Where did you use the term modular units?
24	That modular units were being manufactured by
25	Trane?

1	A That's the term they're using here so that's the
2	term I'll have to use.
3	Q. We're not using that term here.
4	A It's been mentioned here.
5	Are the Trane units the same as the modular units
6	as far as you know?
7	A I don't know. I haven't seen one.
8	Q Do you use the word modular units to describe all
9	kinds of vertical fan coil units?
10	A Never knew about modular units up until around
11	May.
12	A You never used the phrase before modular units to
13	describe fan coil units?
14	A No, sir.
15	JUDGE ROSS: Have you ever heard of vertical
16	fan coil units before May 1973?
17	THE WITNESS: Yes, sir, I did.
18	JUDGE ROSS: When did you first hear about
19	vertical fan coil units?
20	THE WITNESS: When we visited a shop, Ronnell
21	Corporation a year and a half ago.
22	Q (By Mr. Blyer) When was it that Mr. Schembeck told
23	you about what did he tell you about the Trane units?
24	A The shop steward called me out, he told me he was
25	informed from the foreman that the vertical fan coil units

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1	were coming in with the branches and the risers connected
2	to them. They wanted to know what would be done with
3	them.
4	Q Did the shop steward mention that they were being
5	purchased from Trane?
6	A I don't recall if he gave me that name or not.
7	Q Is this in early January 1973?
8	A I would say it was early part of the winter, exact
9	date I don't know. I don't keep a record.
10	a Did you go down to the job site on that occasion?
11	A Yes.
12	And did you speak with Mr. Ray and Mr. Schembeck?
13	A Mr. Ray, Mr. Schembeck and Mr. Hackett.
14	Q Okay.
15	Did any of them tell you at this time that the
16	units were being purchased from Trane?
17	A I don't believe they ever mentioned the name Trane
18	to me. They said they were being delivered from somewhere
19	outside the City of New York. Whether they mentioned the
20	name Trane or not, I don't know.
21	Q When do you think you first learned that the units
22	were being purchased from Trane?
23	A It was a call from our general office in Washington
24	from a special organizer by the name of Harold Grief,
25	G-R-I-E-F . And he had told me that someone from Trane

1	had called him and asked him what objections the Association
2	would have about installing vertical fan coil units, and
3	I said, Marold, the only objections we have is the viola-
4	tions of the cutting of the branches and the risers.
5	Q Now, when was this?
6	A I would say January, February. Exact dates I
7	don't know.
8	And he mentioned that they were being purchased
9	from Trane, that the order had been put in?
10	A I believe he did, yes. This could have been a
11	later date, I'm not sure of the date. It could have been
12	late February, early March, I'm not sure.
3	Q Was it subsequent to your conversation or prior
4	to your conversation of, at the Building Trades Employees
15	Association?
16	A I believe it was at a later date.
17	Q After it?
18	A Yes.
19	Q What type of units went into the Reynolds Building
20	on East 58th Street, vertical fan coil units?
21	A I wouldn't know. The only way I know except for
22	the testimony that was here yesterday. I've never seen
23	the unit.
4	Q Didn't you say you did see the unit when you went
25	down to Ronnell?

151 1 I said I seen the cubicle that was going to be 2 built, the unit was going to be built into, not the 3 finished product. When you went down to see those units being built 5 at Ronnell, didn't you know who they were being built for? 6 MR. FLEISCHMAN: I object. 7 JUDGE ROSS: Overruled. 8 Answer the question. 9 a When you went down to Ronnell on/or about, on/or 10 about May of '72, didn't you know who those vertical fan 11 coil units were being built for? 12 I did not. 13 What was the purpose of your visit? 14 They wanted to show us the new type of unit that 15 was being built. 16 They didn't tell you who it was being built for? 17 No. 18 JUDGE ROSS: Did you inquire at that time 19 as to whether or not risers and, were being built into 20 the unit? 21 THE WITNESS: Yes. I was aware they were 22 going to be built into the unit by and for Local Union 638. 23 JUDGE ROSS: Being built into the unit by 24 Local 638 men working for Ronnell? 25 THE WITNESS: By men of 638 working for

Ronnell.
Ronnell.
JUDGE ROSS: And you didn't have any objection
to that?
THE WITHESS: No. I didn't have any
objection.
JUDGE ROSS: Even though Ronnell was not
going to do the installing?
THE WITHESS: I didn't know whether Ronnell
was going to do the installing or not.
JUDGE ROSS: Well, did you inquire?
THE WITNESS: No, I didn't.
JUDGE ROSS: Why didn't you inquire?
Because 638 men were making them?
THE WITNESS: Because 638 men were going to
install the piping on it, yes.
JUDGE ROSS: Proceed.
Q (By Mr. Blyer) You say install the piping at
Ronnell?
λ Yes.
a They were also going to install them at the building
on East 58th Street; is that correct?
A I didn't know. I didn't know at the time where they
were going or who the contractor was going to be or any-
thing else. All I did was go in and see the unit.

It is a fact that Ronnell has a contract with 638

1	to install such types of units; isn't that correct? 153
2	A As far as I know, yes.
3	a Now, you said, regarding December 28 or about that
4	date, a conversation that you had with Mr. Corsini, that
5	you made a second call to him; is that correct?
6	A Yes.
7	Q And that call was after you were told that, will
8	by Mr. Corsini, it had nothing to do with the boilers or
9	pumps or you still called him anyway?
10	A Yes.
11	Q You testified to see if he could help you out
12	with the builder?
13	& Correct.
14	Q Did he say he was going to try to help you out in
15	the first conversation?
16	A He said he'd look into it and see what he could do.
17	Q He advised you to call him back?
18	A. Beg your pardon?
19	g Did he invite you to call him back?
20	A. No. I know how to get in contact with him.
21	a When you spoke to him the second time, did he tell
22	you he spoke to the builder?
23	A Re said there wasn't much he could do being that th
24	contract had already been given to the riggers.
25	Q Did you ever contact anyone from the riggers?

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. 1	A Did I ever have any contact with who?
2	Ω Anyone from the riggers.
3	A. Yes. The riggers' business agent on the job.
4	a What exactly did you tell Mr. Schembeck, Mr.
5	Hackett and Mr. Ray regarding the vertical fan coil units
6	that were going to be delivered?
7	MR. FLEISCHMAN: I object on the grounds it
8	is repetitious. This is the third time.
9	JUDGE ROSS: Overruled.
10	Q Would you please answer that question, what did
11	you tell Mr. Ray, Mr. Hackett and Mr. Schembeck about the
12	vertical fan coil units that were going to be delivered?
13	A I said to Mr. Hackett, who is the shop steward,
14	when these units arrived on the job, unload them, put them
15	in their respective places whereever it might be, call me
16	up, I will take a look at them and tell you whether there's
17	a violation or not.
18	Q What do you mean by their respective place?
19	A Well, at times when you get equipment like that in
20	a builder is very reluctant to, in an open building to put
21	equipment in that could be missing. They usually lock
22	them up. We have refrigerators delivered. They usually
23	put them in a warehouse or garage, someplace where they
24	would be placed.

Q We're talking about vertical fan coil units.

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155 1 It's an expensive item. It could be taken away 2 from the building, let's say. 3 Isn't the procedure normally to put them right up on the floors? 5 No. sir. 6 Not to your knowledge? No, sir. Absolutely not. If you're talking about 7 a vertical fan coil unit, I said I don't know what they 8 would do with a vertical fan coil unit, but equipment that 9 comes into a building, expenseive equipment like this that 10 could be removed, they usually put it in a warehouse. 11 12 How about horizontal fan coil units? 0 13 They would put them in a warehouse. 14 They wouldn't put them on floors? 0 15 No. 16 What would they be waiting for? 0 17 To install them. 18 Why couldn't they put them right off the trucks onto 19 the floors? Well, being around as long as I have you speak to 20 builders, contractors, you'll know that they're not going 21 22 to stay there very long. They're pretty heavy aren't they, these vertical 23 and horizontal fan coil units? 24

I don't know what the weight of a vertical fan coil

1	unit is, but I would say horizontal unit would wiegh
2	maybe 100 pounds, 120 pounds.
3	A You suggest people carry them off, is that the
4	problem?
-5	A Yes. To say the least.
6	Q Carry off vertical fan coil units?
7	A. Oh, yes.
8	Q Horizontal fan coil units.
9	JUDGE ROSS: Are you waiting for an answer
10	or
11	MR. BLYER: I thought the gentleman answered
12	the question.
13	THE WITNESS: It's so fast I didn't what
14	was the first question?
15	MR. BLYER: Well, as far as I'm concerned
16	the question I has been answered, Your Honor.
17	JUDGE ROSS: All right, let's proceed.
18	Q (By Mr. Blyer) Isn't it a fact
19	JUDGE ROSS: Those were rhetorical questions
20	anyway.
21	Q Isn't it a fact that the vertical fan coil units
22	weigh three times as much as the horizontal fan coil unit?
23	A The vertical fan coil unit wieghs three times as
24	much as a horizontal, I wouldn't know, I haven't the
25	slightest idea.

stalling these?

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		•	157
JUDGE	ROSS: In any	rate, it's	your testi-
mony that when mate	rial is deliv	ered to the	job it's put
in the warehouse fi	rst before it	's put on th	e floors
where they are goin	q to be insta	lled eventua	11y?
THE WI	TNESS: Yes.	As a rule -	-
JUDGE	ROSS: Just a	nswer my que	stion, is
that a fact?			
THE WI	TNESS: Yes.		

JUDGE ROSS: Proceed.

MR. FLEISCHMAN: Your Honor, I think he said certain materials. I mean a boiler or a pipe may not be. I wouldn't --

JUDGE ROSS: I suggest that you don't suggest the answer to the witness. He didn't make any distinctions at all. You're making distinctions and not the withness.

Are there any exceptions, you want to tell us about now?

THE WITNESS: The exceptions as far as in-

JUDGE ROSS: As far as where the materials normally go when they're delivered to the job site.

fan coil units would very sledom be put on the job where they could be removed that easily. This is an isolated area.

JUDGE ROSS: We're not talking about where

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158 they could be removed easily. We're talking about whether they're put on the job into a warehouse or whether they're put on the floor or a place where they're about to be installed? THE WITNESS: I would say they would be put into a warehouse until they're ready to be installed. JUDGE ROSS: What makes you think when they're delivered to the job site they're not ready to be installed immediately? THE WITNESS: Most times the walls aren't finished. JUDGE ROSS: Isn't it a fact that most builders have their supplies delivered to them at the time that they're ready to put them in, so that the stuff wouldn't hang around and clutter up the job site? 16 THE WITHESS: Not necessarily, no. 17 JUDGE ROSS: Well, that's an evasive answer when you say not necessary. Isn't that the unusal practice? 18 You don't order materials until you're ready 19 20 to put them in? THE WITNESS: No. I've seen jobs where they 21 just take them and lock --22 JUDGE ROSS: Is that an exception or is that 23 24 a rule? THE WITNESS: I would say a rule. 25

1	Q (By Mr. Blyer) Did you ask either Mr. Schembeck
2	Mr. Hackett or Mr. Ray or anyone else to notify you when
3	those units came in, the vertical fan coil units?
4	A Oh, yes.
5	And you insist that you told them that you wanted
6	to look at them before they did what to them?
7	A Yes.
8	Q Before what was done with them?
9	A. When they came in, I wanted to take a look at
10	them, after they unloaded them, I wanted to take a look
11	at them.
12	Q Why was it important for you to tell them to put
13	them in their respective places meaning the warehouses i
14	that's a normaly procedure?
15	MR. FLEISCHMAN: I object.
16	JUDGE ROSS: Objection sustained.
17	Q Wouldn't you also have looked at them once they
18	were put on floors?
19	MR. FLEISCHMAN: I object.
20	JUDGE ROSS: Objection sustained.
21	MR. BLYER: I have nothing further, Your
22	Honor.
23	JUDGE ROSS: Any redirect Mr. Lundy.
24	CROSS-EXAMINATION
25	BY MR. LUNDY

Mr. Donnelly, you stated on cross-examination that you had a number of telephone calls with Mr. Corsini around December 28.

Did you make a memorandum of any of those calls?

- No, I never take notes of my phone calls, never.
- Q You also stated on direct that the first time you heard the word modular it was in May of 1973?
- A That's correct.
- Q Can you please tell me what was the occasion?
- A We were having a meeting, a business agents meeting and someone had mentioned the fact that Modular Energy was going out of business, and I turned around, I forget one of the business agents, I said who is Modular, and then it was explained to me who Modular was and that's the first time I ever heard of Modular.
- Q You said that you visited Ronnell about a year and a half ago.

Can you explain the occasion of that?

A Yes. The occasion of these vertical fan coil units come up and the business agent in the area had asked the business agent to come out and look at this unit and explain to us how it was going to be put together, and I just went out and I met with the business agent in the area.

We went over to the shop and the day we were

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1	there, the only thing that was there was the cubicle with
2	part of a fan section in it, on the top of it. And that's
3	all that was in the cubicle at the time. But he did ex-
4	plain to me the workings of it and how it would be
5	manufactured.
6	Q That's the business agent?
7	A Beg your pardon?
8	Q The business agent explained it to you?
9	A Yes.
0	Q Was there a representative of Ronnell there?
1	A I believe Mr. Ronnell himself came in just before
2	I was leaving.
3	Also on direct, I think, you indicated that Ronnell
4	was doing some manufacturing of these units?
5	A I was under the impression at the time that it was
6	going to be Ronnell, yes.
7	JUDGE ROSS: I didn't hear what you said.
8	THE WITNESS: I was under the impression it
9	was going to be Ronnell because it was Ronnell's shop that
0	I had visited.
1	JUDGE ROSS: Has Ronnell also installed
2	these units?
3	THE WITNESS: I understood from testimony
4	here that Ronnell installed the job

JUDGE ROSS: I mean from your own knowledge,

1	not what you heard here in the Court.
2	THE WITNESS: I understood that he did the
3	job at East 58th Street.
4	JUDGE ROSS: The installlation?
5	THE WITNESS: The installation.
6	Q (By Mr. Lundy) Did Mr. Ronnell tell you that or
7	did you understand that when you were out there?
8	A At that time?
9	Q Yes.
10	A That was long before the job was in progress as'
11	far as I know.
12	a Do you know what the name of the units were that
13	Ronnell was making?
14	A No, sir, I do not.
15	Q Also on direct, I believe you said you had occasion
16	to visit the various jobs.
17	Have you visited the North Shore Towers job?
18	A Quite often.
19	Q Have you walked around the premises of the job?
20	A Oh, yes.
21	Q You're thoroughly familiar with the location and
22	where the buildings are and what's in the building?
23	A. Oh, yes.
24	Q Would you tell me where the warehouses are; to
25	which warehouses are materials placed?

1	A When I say warehouse, usually garage where they
2	put up partitions.
3	Q Where are they in the North Shore Tower job?
4	A Right on the job site.
5	Q Where?
6	A Within a half block of the building.
7	Q It's a separate structure?
8	A Yes. It's underneath one of the big buildings.
9	There are three buildings there, and the garages are under
0	neath the apartment house.
1	Q I thought you said a moment ago it was within a
2	half block of one of the buildings?
3	A What I was referring to, the building I usually
4	go into is the boiler room, that's where most of the men
15	are working; then across the way there is
6	And there is a warehouse under that building into
17	which materials are placed?
8	A I didn't say that. I said they could be making a
19	warehouse in there.
50	JUDGE ROSS: The question originally was, is
21	there a warehouse at this job?
22	You say there could be a warehouse made out
23	of that place.
24	Is there or is there not a warehouse at the
25	North Shore Towers job?

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you told them. MR. FLEISCHMAN: I object to the question. JUDGE ROSS: Objection sustained. Proceed. (By Mr. Lundy) Isn't it a fact that there is a

variety if materials for various trades which are delivered to the job site?

I didn't get that?

Isn't it a fact that there are a variety of materials and equipment which are delivered to the job site for the various trades to install?

A A variety?

Yes.

Oh, yes, sure.

Electricians' equipment? 0

Sure.

Plumbers' equipment, Steamfitters' equipment, all those various types of equipment?

Yes.

What happens to that equipment when it's delivered to the job site at the North Shore Towers job site?

Well, if you were to speak to an electrician or a plumber, they will tell you that any of that stuff that comes in --

MR. LUNDY: Your Honor, the witness is not

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shanty.

1 answering my question. I didn't ask him what happened 2 if I spoke to an electrician. 3 Now, he stated on the record before that he 4 was familiar with this job. I'm asking him if he knows --5 JUDGE ROSS: I don't want any argument. 6 You've made your point, and you haven't 7 answered the question. 8 Read the question back, Mr. Reporter? 9 (Whereupon, the last question was read 10 back by the reporter.) 11 It depends on the type of equipment you're referring 12 to. Expenseive equipment is positively locked up in 13 warehouses or some kind of shanties that they -- for in-14 stance, lead for the plumber, that stuff is not laying 15 around. 16 JUDGE ROSS: We're talking about the North 17 Shore Towers job? 18 THE WITNESS: Yes. 19 JUDGE ROSS: And you've testified just a 20 few minutes ago that there was no shanty or warehouse at 21 that job. And Mr. Lundy is asking you what happens to

Now, tell us what happens at the North Shore

this equipment at the North Shore Towers job, and you keep

telling me that it's put in a shanty, when there is no

1	Towers job when this equipment is delivered?
2	THE WITNESS: It's locked up.
3	JUDGE ROSS: Where?
4	THE WITHESS: In shanties, or whereever the
5	contractor can find a place to put it where it's going to
6	be safe.
7	JUDGE ROSS: Proceed.
8	Q (By Mr. Lundy) Mr. Donnelly, in your visits to
9	the North Shore Towers project, around the project, have
10	you seen any bathtubs?
11	A No.
12	JUDGE ROSS: Answer the question.
13	THE WITNESS: No.
14	JUDGE ROSS: We can't hear you when you
15	shake your head.
16	No. I never seen a bathtub.
17	Q When was the last time you were at the job site?
18	A Six, seven weeks ago.
19	MR. LUNDY: That's all I have, Your Honor.
20	JUDGE ROSS: Any redirect?
21	MR. FLEISCHMAN: Yes.
22	REDIRECT EXAMINATION
23	BY MR. FLEISCHMAN:
24	ρ Do the various trades have their own shanties?
25	a Proper trade has their own shanty shack.

* * *

leading the witness.

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MR. FLEISCHMAN: Okay.

I have no further questions.

MR. BLYER: Your Honor, I have one area I'd like to explore very briefly.

RECROSS-EXAMINATION

BY MR. BLYER:

- When did you learn Ronnell was going to be putting vertical coil units in East 58th Streeet?
- A Oh, I would say about six months ago.
- What month would that be, six months ago, in the winter, early winter?
- A Yes, around that time.

JUDGE ROSS: Six months ago would be March.

THE WITNESS: March, around that time. I have no particular date. I remember conversation being heard that Ronnell was installing vertical fan coil units on a job in Manhattan. The exact address or street I didn't know.

- Q (By Mr. Blyer) You didn't know that when you went to visit the building in May of '72?
- A Visit the shop.
- Q Ronnell's shop?
- 24 A No, I didn't.
 - Q When was that building completed on East 58th

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Stree	t7
)	I haven't the slightest idea.
a	Is it completed now?
L	I it may be, I don't know. I really don't
know.	
	MR. BLYER: I have nothing further, Your
Honor	
	JUDGE ROSS: You may step down, thank you,
	Call your next witness.
	MR. FLEISCHMAN: I have no further questions.
	JUDGE ROSS: Any rebuttal?
	MR. BLYER: Well, at this time I thought I
would	request that Mr. Corsini be placed back on the
stand	so that he may identify the documents that you re-
quest	ed yesterday, although I have no rebuttal, Mr. Lundy
says	he would like to conduct some rebuttal.
	Whatever you prefer?
	JUDGE ROSS: Well, is Mr. Corsini the re-
butte	al witness?
	MR. BLYER: Yes, I believe he is.
	MR. LUNDY: Yes.
	JUDGE ROSS: Will you put Mr. Corsini on and

you take care of what you want to take care of, and we will take care of the rebuttal.

MR. BLYER: Okay. Mr. Corsini.

1	JUDGE ROSS: Take a few minutes recess.	
2	(A short recess taken.)	
3	JUDGE ROSS: On the record.	
4	Your name is August Corsini?	
5	THE WITNESS: Yes.	
6	JUDGE ROSS: You're the gentleman who testiife	
7	yesterday?	
8	THE WITNESS: I am.	
9	JUDGE ROSS: You understand you're still	
10	under oath?	
11	THE WITNESS: Yes.	
12	JUDGE ROSS: Proceed.	
13	MR. BLYER: I'd like to have marked for	
14	identification this document as General Counsel's 5.	
15	(The above referred to document was marked General Counsel's	
16	Exhibit Number 5 for identifi-	
17	cation, as of this date.)	
18	Whereupon,	
19	AUGUST CORSINI,	
20	was recalled to the stand as rebuttal witness on behalf	
21	of General Counsel, was examined and testified as follows:	
22	REBUTTAL EXAMINATION	
23	BY MR. BLYER:	
24	Q Can you please identify what has been marked for	
25	identification as General Counsel's number 5?	
	(Handing document to witness.)	

1		This is my contract with North Shore Towers.
2	0	Now, what is the when what is the date of
3	the	signing of that contract?
4	A.	The contract was signed June 12. I received my
5	сору	the end of June. It was mailed to me on June 22nd.
6	0	What year are we talking about?
7		1973.
8	0	When did you orally commit yourself to this
9	cont	ract?
10	A	Fall of '72. We started operations November of '72.
11	0	And have you received any moneys pursuant to that
12	cont	tract prior to the signing of it?
13	A	Yes, we have.
14	a	And what in what amount approximately?
15	1	We started operations in November of '72, between
16	Nov	ember of '72 and June the end of June '73, we re-
17	qui	sitioned a million eight hundred thousand dollars.
18	0	Does that mean
19		JUDGE ROSS: What's the materiality of all
20	thi	s information?
21		All you wanted to see was the contract. That's
22	wha	t Mr. Pleischman wanted to see the contract, and I
23	ask	ed you to bring it.
		and parent of the second of th

the contract.

Your Honor, we would also request that the copy which is finally introduced into the record be the copy with the price information excised from it after Mr. Fleischman has had an opportunity to see --

MR. FLEISCHMAN: I have no objection.

JUDGE ROSS: Mr. Fleischman doesn't object and I don't object.

MR. LUNDY: Your Honor, it is understood, is it not, that Mr. Pleischman will not reveal the prices that he sees on this to his client?

JUDGE ROSS: That's not even necessary.

MR. FLEISCHMAN: May I have some voir dire

JUDGE ROSS: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. FLEISCHMAN:

on this.

the agreement identifies Sigmund Sommer as agent for North Towers Associates as the first party and Mandell and Corsini, Inc., as the second party and on page 4 it says that the following contracts, agreements and purchase orders covering the purchase of materials and services referred to therein may at the option of the first party be assigned by first party to second party as the agent of the owner and in the event of such assignment the second party shall assume all

1	of the rights and responsibilities of first party there
2	under.
3	Now, with the vertical fan coil units pur-
4	chased by Mandell and Corsini or by North Shore Towers?
5	A Mandell and Corsini.
6	0 Now, when Mandell and Corsini purchased the vertical
7	fan coil units, was it purchasing those units as the
8	agent for the owner?
9	MR. BLYER: Your Honor, I object to this
10	line of questioning. It's really not proper voir dire.
11	JUDGE ROSS: That's correct.
12	Objection sustained.
13	MR. FLEISCHMAN: I have no further questions.
14	JUDGE ROSSL Any objection to the introduction
15	of this contract in evidence?
16	MR. FLEISCHMAN: No.
17	JUDGE ROSS: General Counsel's Exhibit 5 is
18	received in evidence.
19	General Counsel's Exhibit No. was received in evidence, as
	of this date.)
21	JUDGE ROSS: And the copies excised as you
22	indicated Mr. Blyer are acceptable in lieu of the
23	original.
24	MR. BLYER: Thank you, Your Honor.

JUDGE ROSS: Let's proceed.

MR. BLYER: I'd like to have marked for identification General Counsel GC-6, the contract between Mandell and Corsini and the Trane Company.

(The above referred to document was marked General Counsel's Exhibit No. 6 for identification, as of this date.)

(By Mr. Blyer) I show you, Mr. Corsini, what has been marked for identification as General Counsel's number 6.

CAn you identify that document.
(Handing document to witness.)

- A Yes, sir. This is the order to the Trane Company.
- Now, there appears to be three separate documents as part of the one.

Can you briefly explain the three separate documents?

- The first is a letter of intent to the Trane Company
 telling them to proceed in accordance, in accordance with
 our verbal commitment of time prior, then the actual
 written contract --
- a Is the second document?
- A Yes, mir. The second document is a written contract.
- n How many pages is the letter of intent?
- A One page.

1	a And how many pages is the written contract?
2	A. Three pages.
3	Q What is the third document?
4	1 The third document is attachments, the specification
5	section, paragraph 41, the amendments to that paragraph 41,
6	and the list of drawings revised and original drawings
7	that are pertinent to the vertical fan coil units.
8	Q Just for clarification purposes, if I could, you
9	identified the first document as the letter of intent?
10	A Correct.
11	Q The second document, am I not correct in saying
12	is two pages long?
13	A Yes.
14	And looking at the document carefully, what are
15	those two pages?
16	1 That is an order, a revised order to the Trane
17	Company, dated 3/30/73.
18	a Now, turning to the 4th page in this exhibit, I
19	note a three page document with atttachments.
20	What is the three page document?
21	A The three page document was the original written
22	order with attachments that was revised. That's why the
23	two page document has "R" after it.
24	Am I correct in saying that we have the original
25	order, the revised order and the letter of intent as part

1	of the contract with the Trane Company?
2	A Yes, that's correct.
3	And also attachments which are mentioned in the
4	contract and the revised contract?
5	A That's correct.
6	MR. BLYER: Your Honor, I'd like to offer
7	this as GC-6.
8	Your Honor, with this document too we would
9	appreciate it if we could offer into evidence the documents
10	which are blanked out with regard to price figures.
11	I have handed Mr. Pleischman a complete
12	contract.
13	JUDGE ROSSL Wait until we see if we will
14	recieve it first.
15	MR. BLYER: Okay.
16	JUDGE ROSS: Any objection, Mr. Fleischman?
17	MR. FLEISCHMAN: May I just ask Mr. Blyer
18	off the record
19	JUDGE ROSS: Yes.
20	Off the record.
21	(Discussion off the record.)
22	JUDGE ROSS: On the record.
23	(By Mr. Blyer) Mr. Corsini, what has been marked
24	for identification as General Counsel's 6, what you described
25	as documents two and three, the order revised order and the

first order, they both have the same date of 3/30/73. 2 Can you explain that? 3 Right. Now, the first order, our order number 22675, dated 3/30/73, was delivered to the Trane Company. The 5 Trane Company wanted something changed in the first para-6 graph. That same day a revised order, 2267R, changed part 7 of the first paragraph, and if you will notice written on 8 the top next to Mr. Dell Walker's name is 4/30/73, by 9 10 hand. That means it was revised and delivered to him by 11 12 hand that same day. 13 You mean 4/30 or --It was -- in other words we have -- when we write 14 an order, we always keep the same order number. If it's 15 revised we put an "R" after it. It was delivered 4/30/73. 16 17 JUDGE ROSS: 4/30 is April 30? 18 THE WITNESS: Right. 19 Which is a month after it was revised? Correct. But we do not change the order number, we 20 21 don't change the original document. 22

JUDGE ROSS: You've answered the question. MR. FLEISCHMAN: I have no objection. JUDGE ROSS: General Counsel's Exhabit 6 is recieved in evidence.



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MR. BLYER: Yes, Your Honor.

JUDGE ROSS: You may proceed with your rebuttal testimony, Mr. Lundy.

REBUTTAL EXAMINATION

BY MR. LUNDY:

Mr. Corsini, on direct examination and cross, I believe Mr. Donnelly testified concerning the disposition of horizontal fan coil units when they are shipped to a lob site.

Would you state for the record what disposition is made of horizontal fan coil units when they are shipped to a job site?

- They are, on our projects removed from the truck and hoisted to the various floors to be distributed.
- Your projects different from other projects?

 MR. FLEISCHMAN: I object. No foundation.

JUDGE ROSS: Qualify the witness before you ask that question.

MR. LUNDY: All right.

Q (By Mr. Lundy) Mr. Corsini, I --

MR. LUNDY: I believe the record indicates that Mr. Corsini has extensive --

JUDGE ROSS: I want to know what his experience is with regard to what other job sites he's not involved with to see whether or not he can testify to a

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practice which does not involve his own job site.	
MR. LUNDY: Yes, Your Honor.	
(By Mr. Lundy) Mr. Corsini, in your work in the	
construction business have you had occasio to visit job	
sites of contractors other than your own firm?	
Well, I work for Raisler Corporation for a number	
of years as I have mentioned.	
Q Did you visit their job sites?	
A Yes.	
Q Have you visited job sites of other mechanical	-
contractors?	
A Yes, I have.	
Are you familiar with the general practice with	
regard to the disposition of horizontal fan coil units	
when they are delivered to a job site?	
A Yes, sir, I am.	
Q What is done with those horizontal fan coil units	
when they are so delivered?	
	1
Do you know of any instance when they are not so	
	practice which does not involve his own job site. MR. LUNDY: Yes, Your Honor. (By Mr. Lundy) Mr. Corsini, in your work in the construction business have you had occasio to visit job sites of contractors other than your own firm? Mell, I work for Raisler Corporation for a number of years as I have mentioned. Did you visit their job sites? Yes. Have you visited job sites of other mechanical contractors? Yes, I have. Are you familiar with the general practice with regard to the disposition of horizontal fan coil units when they are delivered to a job site? Yes, sir, I am. What is done with those horizontal fan coil units when they are so delivered? They are normally hoisted to the floors where they going to be installed. You said normally.

Not really because there are so many of them. They

take so much room. They usually go to the various floors where they will be installed.

- What is the approximate weight and size of it, of
 horizontal fan coil units?
- A Horizontal fan coil unit would weigh in the area of 70 pounds. It would be about two feet long, two feet high and about one foot in depth.

can't be stolen, you're wasting your time because lots of things can be stolen from a unit, even assuming that it was too large to pick up, in the streets of New York City it is general knowledge that if you leave your car, your bumper, your hub caps and other things may be taken, and your battery may be taken from the car although the car is too big to be picked up and removed by itself, so stop wasting time on that project.

NR. LUNDY: Your Honor, if I may, I would like to ask Mr. Corsini very briefly the wieght and size of vertical fan coil unit is approximately ten foot high, nine to ten foot high, about 14 inches wide, 14 inches deep. They weight approximately three hundred pounds.

- Q (By Mr. Lundy) Mr. Corsini, do you have a shanty at the North Shore Towers site?
- A Yes, we do.
- What kinds of equipment, if any, are stored in that

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- A Very expensive controls, thermometers and gauages, small items that generally would walk from a job, brass valves, that sort of fing.
- Can any kind of fan coil unit be stored in that shanty when they are delivered to the job site?
- A Shanty is not big enough. There are 6,000 vertical fan coil units, each about ten feet long.

JUDGE ROSS: All right.

I've had enough testimony on that subject.

Anything else on rebuttal?

MR. LUNDY: Yes, Your Honor. There was some testimony on direct and on cross of Mr. Donnelly concerning tubs at the North Shore Towers project.

- (By Mr. Lundy) Do you have any knowledge concerning the installation of tubs at that project six weeks ago?
- A Yes. Yes.
- Q What was the state of affairs at that time?
- A. During the past summer months the tubs were delivered to the job, unloaded from the truck, and lifted to the various floors.
- a Are they easily visible at those floors?
- A. Yes, they are.

MR. FLEISCHMAN: I object.

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188 1 JUDGE ROSS: Overruled. 2 MR. LUNDY: I have no further questions, 3 Your Honor. 4 JUDGE ROSS: Any cross? 5 MR. PLEISCHMAN: Yes. CROSS-EXAMINATION 7 BY MR. PLEISCHMAN: 8 Returning to General Counsel's Exhibit number 5, my understanding is that the finely printed material is 9 10 the standard contract which most subs enter into with 11 the general contractor; is that correct? 12 That's correct. And that the material before, it all geared specially 13 14 to the particular work done by the sub contractor? 15 That is correct. 16 Isn't it true that on pages -- draw your attention 17 to page 10 of 19 pages. JUDGE ROSS: Let me see the contract, please? 19 (Mr. Blyer handing contract to Judge Ross.) 20 And particularly the last two paragraphs where it 21 states that the second party shall provide and pay for any and all sheds, storage building and office space that 22 he may require to properly prosecute his work, and then 23

he's to remove the sheds and storage space --

JUDGE ROSS: Ask your question I can read

it and he can read it.

- You have special provisions regarding storage spaces and sheds where materials are to be placed for save keeping am I right?
- A Correct.
- And on the next page, page 11, you also undertook the responsibility for the proper care and protection to safeguard all portions of the work, including all materials delivered to the job?

That was your responsibility too?

A Right.

JUDGE ROSS: Now, Mr. Fleischman, I have an objection to the form of the question. If you're going to call the witness' attention to certain contract provisions, you save your breath and call them to my attention in your brief and make your argument on that basis.

The contract speaks for itself. It may be very important, but I don't see any point in calling attention of the witness to contract provisions which I can read and which you can call to my attention.

(By Mr. Fleischman) At times has Mandell and Corsini or Raisler had materials delivered by trailer and the trailer was left on the job site with materials in them and as the materials were needed were taken out of the trailer and the balance kept there until used, have

you ever seen that?

- A I've heard of that, yes.
- Does it happen at times that more units of an item are delivered that can be installed simultaneously with the delivery by the steamfitters on the job so that you unload the truck, put some of the articles away for safe keeping, and remove them from a storage area, warehouse, shanty or locked room as it may be?

Does that ever occur?

- A On our purchase orders you'll find a stipulation that the trucker will notify the, Mandell and Corsini
 48 hours before shipment so that we can make arrangements to have the proper number of men unload that truck when it arrives.
- a Right.

I'm not addressing myself to the unloading of the truck. Let us assume that 200 units of a particular pieces of equipment are delivered, and you can only install 30 a day, what do you do with the other 170?

A It's not a question of installing, Mr. Fleischman.

It's a question of the distributing. There's a difference.

There is a very big difference.

Now, when a truck arrives we remove the items from the truck and distribute it. Not install it. There is a --

If the equipment or the articles are valuable, 1 2 whose responsibility is it if the articles are missing 3 say, the articles on the 4th and 5th floor are missing 4 the next day? Is it your responsibility or that of the owner? 5 It is our responsibility. And do you have a watchman on each floor where 7 8 equipment is distributed? 9 There is a fence around the project, and there is 10 a guard at the gate and you must have a sticker for your 11 car to get in and out of that project. Every truck is 12 stopped in and out. So that apart from small articles such as brass 13 valves and control items nothing else is ever stored by 14 15 you in locked rooms, shanties, warehouses on job or what-16 ever you call them? 17 A Some other items are, yes. 18 MR. FLEISCHMAN: I have no other questions. 19 MR. BLYER: I have nothing, your Honor. 20 MR. LUNDY: Nothing, Your Honor. 21 JUDGE ROSS: You may step down, thank you (Witness excused) 22 JUDGE ROSS: All sides rest? 23 24 MR. BLYER: Yes.



MR. FLEISCHMAN: May I just have two minutes

STATE OF NEW YORK) COUNTY OF NEW YORK) SS.: deposes and says that deponent is not a party to the action is over 18 years of age and resides at 980 That on the 25 day of deponent personally served the within upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose. By leaving ____ true copies of same with a duly authorized person at their designated office. By depositing / true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York. Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses. Cllest Moore Deputy associate Heneral Counsel National Falor Relations france 1117 Pennsylvania Que M.W. Washington, D. C. 20570 freston anderson Sworn to before me this day of Sept, 1974 Mechael Lax

MICHAEL DESANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1923